राजपत्र, हिमाचल प्रदेश

हिमाचल प्रदेश राज्य शासन द्वारा प्रकाशित

मंगलवार, 29 नवम्बर, 2022 / 08 मार्गशीर्ष 1944

हिमाचल प्रदेश सरकार

LABOUR AND EMPLOYMENT DEPARTMENT

NOTIFICATION

Dharamshala, the 14 November, 2022

No. **Shram (A) 6-2/2020 (Awards).—**In exercise of the powers vested under section 17 (1) of the Industrial Disputes Act,1947, the Governor Himachal Pradesh is pleased to order the publication of awards of the following cases announced by the Presiding Officer, Labour Court,

Kangra at Dharamshala on the website of the Printing & Stationery Department, Himachal Pradesh *i.e.* "e-Gazette" :—

Sl. No.	Ref. No.	Petitioner	Respondent	Date of Award/order
1.	151/11	Beli Ram	Pradhan Gram Panchayat Bandhi	02-09-2022
2.	511/16	Dalip Singh	E.E. HPSEB, Gohar	07-09-2022
3.	901/16	Virender Kumar	S.E. HPPWD, Mandi	07-09-2022
4.	464/16	Parkash Chand	S.E.E. HPSEBL, Sunder Nagar	07-09-2022
5.	96/17	Mohinder Kumar	Principal, G.S.S.S. Karina, Chamba	13-09-2022
6.	688/16	Pawan	Director, M/s Ginni Global Ltd.	14-09-2022
7.	40/17	Babu Ram	D.F.O. Suket	16-09-2022
8.	39/17	Prakash Chand	D.F.O. Suket	16-09-2022
9.	550/16	Rajesh Kumar & other	M/s Jagran Prakashan Ltd.	21-09-2022
10.	63/15	Santosh Kumar	E. E. HPPWD, Bilaspur	21-09-2022
11.	421/09	Sansar Chand	E.E. I&PH, Killar	30-09-2022

By order,
AKSHAY SOOD,
Secretary (Lab. & Emp.).

IN THE COURT OF SH. HANS RAJ, PRESIDING JUDGE, LABOUR COURT-CUM-**INDUSTRIAL TRIBUNAL, KANGRA**
AT DHARAMSHALA (H.P.)

Ref. No. : 151/2011

Date of Institution : 15-12-2011

Date of Decision : 02-09-2022

Shri Beli Ram s/o Shri Gholi Ram, r/o Village Nawahar, P.O. Bandhi, Tehsil Aut, District Mandi, H.P. . .*Petitioner*.

Versus

1. The Pradhan Gram Panchayat Bandhi, Tehsil Aut, District Mandi, H.P.

2. The Executive Engineer, I&PH Division, Mandi, District Mandi, H.P.

3. Shri Chiranji Lal s/o Shri Tape Ram, r/o Village Rehan, P.O. Bandhi, Tehsil Aut, District Mandi, H.P. . .*Respondents.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Shri Prateek Sharma, Ld. Adv.

For the Respondent No. 1 : Exparte

For the Respondent No. 2 : Shri Anil Sharma, Ld. Dy. D.A.

For the Respondent No. 3 : Smt. Alaknanda, Ld. Adv.

AWARD

The following reference has been received from the appropriate Government for adjudication under section 10 (1) of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for short).

> "Whether the termination of services of Shri Beli Ram s/o Shri Gholi Ram, r/o Village Nawahar, P.O. Bandhi, Sub Tehsil Aut, District Mandi, H.P., Water Guard by the (1) The Pradhan, Gram Panchayat, Bandhi, Sub Tehsil Aut, District Mandi, H.P. (2) The Executive Engineer, I.&P.H. Division, Mandi, District Mandi, H.P. who was appointed in consultation with and after approval of, as well as wages were disbursed by the Assistant Engineer, I.&P.H. Division, Mandi, District Mandi, H.P. *w.e.f.* 05-04-2008 without complying the provisions of the Industrial Disputes Act, 1947, as alleged by the workman, is legal and justified? If not, to what back wages, service benefits and relief the above ex-worker is entitled to from the above employer?"

2. This Reference pertains to the year 2011. The claim petition was filed by the petitioner in the year 2012. The petitioner had averred in the same that he was engaged as a daily wage water-guard for Water Supply Scheme Bandhi, Sub Tehsil Aut, District Mandi by the Gram Panchayat *w.e.f.* 01-7-2007 and he worked as such with I&PH department till 05-4-2008 and successfully completed 240 days in continuity. His services were terminated on 05-04-2008 by the Panchayat orally without assigning any reasons despite of the fact that he was discharging his duties honestly and to the satisfaction of I&PH department. One Shri Chiranji Lal was engaged in his place who was cousin of the then Pradhan of the Panchayat. On these averments, the petitioner prayed for his re-engagement with monetary as well as other service benefits on the averments that the respondents have violated the provisions contained in section 25 F and 25 G of the Act.

3. None appeared on behalf of the Gram Panchayat and therefore, the Gram Panchayat was proceeded against exparte. The I&PH department, however, put appearance through Learned District Attorney and resisted and contested the petition by taking the preliminary objections of maintainability of the petition and delay and latches in raising the demand. On merits, it is pleaded that there was a scheme of the State Government for transfer of operation and maintenance of Rural Water Supply Scheme to Panchayati Raj Institutions and a Memorandum of Understanding was signed between the I&PH department and the Gram Panchayat. The entire responsibility of operation and maintenance of the Water Supply Scheme from store tank was that of the Gram Panchayat and the I&PH department was only to provide financial assistance. The appointment of the water-guards could be made by the concerned Panchayat. In this manner, the applicant was given appointment *vide* resolution No. 4 on the consolidated wages of Rs.750/- per month. It is

pleaded that the I&PH department had no role in the matter except for providing financial assistance and no violation of the labour laws was caused by the department.

4. On completion of the pleadings, Issues were settled and parties led their evidence. Reference was decided by this court on 06-3-2014 and the Award was passed. The claim petition was allowed in part holding that there had been violation of Section 25-F and 25-H of the Act. It was observed that petitioner was not entitled for reinstatement, as his reinstatement will amount to burden the respondent No. 2 with the additional liability. Taking into account the totality of the circumstances, a sum of Rs. 20,000/- was awarded as compensation payable by the Gram Panchayat to the petitioner.

5. The petitioner felt aggrieved and dissatisfied by the award and assailed the same by way of CWP No.3614/2014 before Hon'ble High Court of Himachal Pradesh. It was decided on 23rd December 2015. It was held by the Hon'ble Court that since one Shri Chiranji Lal was subsequently engaged as water guard, he was therefore, a necessary party to answer the Reference and liable to be impleaded as such. The award was set aside and file was remanded back to this court with the directions to decide the Reference after giving Shri Chiranji Lal an opportunity to file the reply and cross-examine any of the witnesses already examined or lead his own evidence, if he so desires.

6. Before this court could comply the aforesaid directions of the Hon'ble High Court, Letter Patent Appeal No.8/2016 was filed before the Hon'ble Division Bench of High Court to assail the judgment of Hon'ble Single Judge and the Hon'ble Division Bench was pleased to dismiss the Letter Patent Appeal. While affirming the judgment of Hon'ble Single Judge, the Hon'ble Division Bench of High Court directed the parties to appear before this court and at the same time directed this court to decide the Reference in accordance with the observations made by the Hon'ble Court.

7. It is in this background that Shri Chiranji Lal, was arrayed as respondent No. 3 by this court and he also put his appearance. Pleadings were amended and additional evidence was also led. It may be stated here that the respondent No. 1, the Gram Panchayat Bandhi was proceeded against exparte before this court even before the remand order as none had appeared before the court on behalf of the Panchayat. None appeared on behalf of the Gram Panchayat before the Hon'ble High Court in writ petition as well as in the Letter Patent Appeal. This fact is clear from the copies of the judgments of the Hon'ble Court placed on the record. The parties were directed to appear before this court by the Hon'ble High Court after the Letter Patent Appeal was dismissed and a specific date for appearance was given by the Hon'ble Court. Even then none appeared before this court on behalf of the Gram Panchayat. Still for the sake of precaution, a notice was issued by this court in the name of the Panchayat, but the same was returned with the report that the then Pradhan of the Panchayat had expired. No further notice was sent by this court thereafter as the notice in the name of Gram Panchayat was sufficient to inform the Panchayat about the litigation. Moreover, the Gram Panchayat was already exparte from the very beginning. None appeared before the Hon'ble High Court on behalf of the Gram Panchayat in the Writ petition as well as In the Latter patent Appeal. None appeared on behalf of the Panchayat after the remand of the case before this court.

8. Shri Chiranji Lal, who was impleaded as respondent No. 3 also resisted and contested the claim petition and took the preliminary objection of the maintainability of the petition, cause of action, concealment of material facts by the petitioner and contended that the claim of the petitioner was vitiated by delay and latches. On merits, his case is to the effect that he is a poor person and is performing his duties as Water Guard since 10-04-2008 till date honestly and diligently. He denied rest of the averments as incorrect and prayed for the dismissal of the claim.

9. The respondent No. 2 also filed the reply after the remand. It was added that since the bill of the respondent No. 3 was forwarded by the Gram Panchayat, therefore, the payment was made by the department as per the terms and conditions of the Scheme. It is further explained that the respondent No. 2 has neither engaged the respondent No. 3 nor it has nay direct relation with him. The main focus has been laid on the fact that the replying respondent was neither an engaging authority nor had any role in the disengagement of the petitioner or engagement of the respondent No. 3. It was further pleaded that only distribution of the wages was done by this respondent.

10. Since the Reference received from the Appropriate Government was not amended and since no corrigendum was received to the same, therefore, no new issue arose for determination after the amendment of the pleadings, and no additional issue was framed by the court. The issues as framed on 07-11-2012 read as under:—

1. Whether the termination of the services of the petitioner by the respondents *w.e.f.* 05-04-2008 is illegal and unjustified as alleged? . .*OPP.*

2. Whether the petition is not maintainable in the present form? . .*OPR2.*

3. Whether the petitioner has a cause of action? . .*OPP.*

4. Whether the petitioner has not approached the Court with clean hands. If so, its effect? . .*OPR2.*

5. Whether the petition is hit by the vice of delay and latches as alleged. If so, its effect? . .*OPR2.*

6. Relief.

11. I have heard learned counsel for the parties at length and considered the material on record.

12. For the reasons to be recorded hereinafter, the findings of this Court on the above issues are as under:—

Issue No. 1	: Partly yes
Issue No. 2	: No
Issue No. 3	: Yes
Issue No. 4	: No
Issue No. 5	: No
Relief	: Petition is partly allowed per operative portion of the Award.

REASONS FOR FINDINGS

Issue No. 1:

13. The fate of the present Reference revolves around this issue and, therefore, the findings on this issue are very material for the purpose of this Reference. As already said hereinabove, the Gram Panchayat, has not contested the claim petition at any stage and thus nothing has been said on behalf of the Panchayat either in favour or against the case of the petitioner.

14. When the reply filed by the respondent No. 2 is carefully examined, it is clear from the perusal of the same that the Government of H.P. had framed a Scheme for transfer of operation and maintenance of Rural Water Supply Scheme to Panchayati Raj Institutes. As per this scheme, a Memorandum of Understanding was to be signed between the I&PH department and the concerned Panchayat. The copy of this Scheme has been tendered on the record as Ext. RW1/B and the Memorandum of Understanding signed between the respondent No. 1 & 2 has been tendered as Ext. RW1/C. Both these documents are very material for the just decision of this case. A harmonious reading of the various clauses of the Scheme Ext. RW1/B shows that this Scheme was launched by the Government in order to involve the local inhabitants of the Gram Panchayats in the work of the maintenance of the water sources, tanks and wells; pipe-lines and supply of the water for domestic use so that not only a community feeling could be strengthened among the villagers but the best use and maintenance and preservation of the natural resources could also be had, as the local inhabitants are very much concerned and caring for the society in which they live. Such local workers also work with commitment towards their own people and in this manner they will ensure regular water supply to their own people with whom they shared social and emotional bonds. The intention of the Scheme is to let the Gram Panchyats to employ their own workers in consultation with the concerned Assistant Engineers. The Gram Panchyats are also authorized to remove the persons so employed by them, in case, their performances are found not satisfactory. It is thus very much clear from the perusal of the aforesaid Scheme that the Water Guards are the employees of the Panchayat and it is the duty of the Panchayats to get the work done from the water-guard. At the end of the month, it Is for the Panchayat to inform the I&PH department about the punctuality, performance, and output of such water-guards so that the department could release the wages in the form of the consolidated amount of Rs.750/- as fixed in favour of such workmen.

15. Since the Gram Panchayats are supposed to engage the water-guards, therefore, it is for the Panchayats to pass the resolutions in the General House and select the suitable persons as water-guards in accordance with the intentions of the Scheme. The information regarding such water-guards has to be given to I&PH department so that the wages could be paid to the engaged person. Before such resolutions are passed, it was for the Gram Panchayats and the I&PH department to sign a Memorandum of Understanding and agree to the certain terms and the conditions.

16. In the case in hand, such a **Memorandum of Understanding** was signed between the respondents No. 1 & 2 and copy of the same has been placed on the record as Ext. RW1/C. This document shows that several terms and conditions have been settled between the two. In order to engage the water-guards to be deployed in various water schemes within the jurisdiction of Gram Panchayat Bandhi, the Gram Panchayat held its meeting on 27-06-2007 for the first time and resolution No. 4 was passed in the General House. Names of the five persons were shortlisted for being engaged in five water supply Schemes operating within the jurisdiction of Gram Panchayat Bandi. These persons consisted of Smt. Reshma Devi sponsored against Water Scheme Dhangwatch, Sh. Sher Singh against Batachatani Scheme, Sh. Khem Singh against Hanogi Scheme, Sh. Uttam Ram against Rains Nashiar Scheme and the present petitioner was sponsored against Bandi Water Scheme. It is clear from the aforesaid resolution that these persons were shortlisted amongst the BPL families residing in the Gram Panchayat and none of their family member was in the Government service. The resolution No. 4 has been tendered on the record as Ext. R-1. Copy of this resolution has been tendered on the record as Ext. R-2, but the same differs from the Ext. R-1 as this resolution speaks of six water-guards.

17. The oral and documentary evidence has been led on the record by the parties. The petitioner had tendered the attendance register Ext.PW1/A through PW1 Shri Narayan Dass, who was supervisor in Panarsa Section of I&PH Sub Divisions at the relevant time and he has verified the attendance marked on this register. Such a facts has been stated by him on oath. He was also cross-examined but nothing fruitful came out in the same. It is clear from this document that the petitioner has worked from July to April, 2008. In the month of April, 2008 he worked for four days only. Secretary Gram Panchayat Bandhi has been examined as PW4 in the witness box. He produced various vouchers from the record of the Panchayat and tendered the same Ext.PW4/A to Ext.PW4/I. He also stated that petitioner was working as a water guard earlier and now Shri Chiranji Lal was working in his place. When these documents Ext.PW4/A to Ext.PW4/I are carefully examined it is clear that wages for three months Rs.750/- x 3 =Rs.2200/- were released *vide* Ext. PW4/A. The petitioner is one the recipient. Similar is the position of another voucher Ext.PW4/B *vide* which wages for the next three months from January to March, 2008 were paid. The petitioner has also received the wages. Ext.PW4/C the third voucher and wages for three months have been received by as many as six persons including the petitioner. Thus the petitioner has worked for nine months in continuity for around 270 days and the number of days is certainly more than 240. thus the petitioner is proved to have worked for more than 240 days in continuity before his termination within the span of twelve calendar months preceding his termination. Ext.PW1/D is the payment voucher for January 2010 to June 2010 and payment for six months has been received by Shri Chiranji Lal and others. Ext.PW4/E is the payment for three months from April 2009 to June, 2009 and a sum of Rs. 2250/- was received by respondent No. 3. Ext. PW4/F is payment for July, 2009 to September, 2009 again for three months. Ext.PW4/G and Ext.PW4/H are similar payments received by the respondent No. 3 along with others. It is therefore, very much clear from these documents that the petitioner worked for nine months and thereafter respondent No. 3 (Sh. Chiranji Lal) was engaged to look after the Bandhi Water Supply Scheme.

18. When the contents of the guidelines/Scheme Ext.RW1/B are carefully examined it is very much clear that the workmen engaged by the Gram Panchayat could also be removed by Gram Panchayat in case their performance was found not satisfactory. When the petitioner was initially engaged as a water-guard for Water Supply Scheme Bandhi *vide* resolution No. 4 dated 27-3-2008, it is for the respondent to prove as to how and why the services of the petitioner were terminated? When the evidence led on the record is further probed, it becomes clear that another resolution dated 10-04-2008 was passed by Gram Panchayat Bandhi in its General House. The copy of such resolution has been tendered on the record as Ext.RW2/B. When the contents of this resolution are examined carefully, it becomes clear that some discussion took place in the General House regarding removal of those water-guard who were not performing their duties with devotion and dedication and were negligent in performance of their duties. By way of this new resolution the name of the petitioner was replaced by respondent No. 3. This resolution was also communicated to the respondent No. 2 and this respondent No. 2 starting releasing the payment to the respondent No. 3 instead of the petitioner. It is in the aforesaid background that the petitioner has raised the dispute *vide* his demand note Ext.PW3/A. The conciliation also took place with no positive results and thereafter, the present Reference was made by the appropriate Government. It is an admitted fact that petitioner had worked for more than 240 days as a water-guard in the Water Supply Scheme Bandhi. It is thus for this court to now adjudicate whether there has been violation of Section 25-F of the Act in this case or not?

19. Faced with the aforesaid question, the learned counsel appearing for the respondent No. 3 has argued that neither Gram Panchayat is an industry for the purpose of this Act nor the amount paid to the petitioner and others fell within the purview of wages as it was a consolidated amount and much below to the minimum wages Act. She further argued that Gram Panchayat is an elected body and therefore, a Gram Panchayat cannot termed as an industry for the purpose of Industrial Disputes Act, 1947. According to her, since the petitioner and others were paid a sum of

Rs.750/- every month and not a daily wage, therefore, the petitioner can not be termed as daily wager, and the provisions of the Industrial Disputes Act are not applicable to the present case. She has further argued that this being the position, the petitioner can not invoke violation of Section 25-F of the Act. Her arguments have been adopted by the learned Deputy District Attorney on behalf of respondent No. 2. He has further argued that respondent No. 2 is neither involved in the process of engagement of workmen nor in their removal, hence, the respondent No. 2 has committed no violation of section 25 F or G, hence the claim is not maintainable. On the other hand, the learned counsel for the petitioner has argued that since Panchayat was engaging workmen therefore, it had become an industry for the purpose of Industrial Disputes Act. He has prayed that the petition be allowed and the engagement of the respondent No. 3 by the respondent No. 1 be declared as null and void and his services be ordered to be terminated and the petitioner be re-engaged with all the consequential benefits.

20. Dealing with the very first argument whether the Gram Panchayat is an industry or not, it may be stated here that the Gram Panchayat Bandhi had engaged as many as six water guards and these water guards were supposed to maintain and regulate the Water Supply Schemes and ensure that the public of the Panchayat get clean, regular and uninterrupted water supply and at the same time it is for the Gram Panchayat to raise the funds at the later stage and make payment to such workmen as is clear from the scheme place on the file. In such a situation, the Panchayat is indulged in the act of providing services to the public at large and in this manner the Panchayat also come within the purview of industry for the purpose of the Act. A similar question has arisen before the Hon'ble High Court of Calcutta in **Sandhya Baul; M Anguswamy** vs. **Director of Panchayat; Panchyat Samiti** reported in **2006 (108) FLR 1017 & In 2006(1) LLJ 637. it was held in para 16 as under:**

> [16] As regards the first issue referred to the learned Labour Court, we are of the opinion that in view of the decision of this Court in the case of Director of Panchayat *v.* Pankaj Banik and Ors., reported in ILR 2004 (8) A & N Series page 5, the Gram Panchayat should be held to be an "industry" within the meaning of Section 2(j) of the Act.

21. No law on this point to the contrary has been cited by the respondents. Thus taking support from this case law, it is held that the respondent No. 1 is also an industry and governed by the Industrial Disputes Act.

22. The next question to be dealt with is whether the payment of wages assessed on the basis of daily wages is a condition precedent to be called as a workman for the purpose of the Act. When the definition of workman in Section 2(s) is carefully gone through it is very much clear that workman means any person (including an apprentice) employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward, whether the terms of employment be express or implied, and for the purposes of any proceeding under this Act in relation to an industrial dispute, includes any such person who has been dismissed, discharged or retrenched in connection with, or as a consequence of, that dispute, or whose dismissal, discharge or retrenchment has led to that dispute. There are some exceptions to the same but the petitioner does not fell under these exceptions. Section 2(s) does not qualify the wages in any manner. It is thus not material whether a fixed amount is paid to a person who has been employed in an industry to do any manual, skilled and unskilled and other works mentioned in Section 2(s) or daily wages are paid to him. The only fact material to be a workman is that he should have been employed to do the skilled or unskilled work and he has been either dismissed, discharged or retrenched from the services and a dispute has arisen. Thus it cannot be said that since the petitioner was getting a sum of Rs.750/- per month and, therefore, this amount was was below the minimum wages hence he was not a workman for the purpose of the Act. Since the petitioner was engaged to do a unskilled/semi skilled work and he was supposed to performing

duties regularly, therefore, he is proved as a workman for the purpose of the Act, and the Gram Panchayat comes within the definition of an industry. The provisions of Section 25-F of the Act are, therefore, fully applicable to the present case. Since the petitioner has admittedly worked for minimum 240 days within preceding twelve months before his services were terminated by way of resolution No. 10 dated 10-04-2008, the petitioner had a right to raise the industrial dispute. The onus is upon the respondents to established that the compliance of Section 25-F of the Act has been done in this case.

23. The respondent No. 1 did not contest the petition as already said hereinabove and it was proceeded against exparte. The respondent No. 2 has nothing to say about manner in which the services of the petitioner were dispensed with as engagement and disengagement of the Water-Guards was within the exclusive domain of the Gram Panchayat. Similarly, the respondent No. 3 has also not said anything about the manner in which the services of the petitioner were dispensed with. There is oral as well as documentary evidence in the shape of the documents produced from the concerned Gram Panchayat by the Secretary of that Panchayat. These documents are material for the purpose of this case. As aforesaid there are two resolutions of the Gram Panchayat on the record. By way of the first resolution, the services of the petitioner were engaged along with five others to operate water supply scheme of Bandhi and *vide* resolution dated 10-04-2008 Ext. PW2/B he was removed and the respondent No. 3 was engaged in his place. The resolution Ext. RW2/D does not speak of the fact that the petitioner was given an opportunity to explain his position. It is does not find mention of the fact that there were serious complaints against him. There is nothing on the record to show that any inquiry took place into the allegations leveled against the petitioner and when the allegations were held as proved against him, his services were terminated as this same was not proved as satisfactory. The Gram Panchayat has not prepared any record of the negligence of the petitioner nor recorded any reasons anywhere to show that the petitioner has for those particular reasons failed to report to his duties. Had any such record prepared in the Gram Panchayat been produced by the Secretary of the Panchayat, while he appeared as a witness in this case as RW2, the court could have gone through the same. Thus the services of the petitioner were not disengaged in pursuance any domestic inquiry. Since the petitioner has worked for more than 240 days within preceding twelve months, his services could be dispensed with without taking recourse to the provisions of Section 25-F of the Act. Since nothing has been placed on the record to show that required procedure was followed before the termination of the services of the petitioner, therefore, the services of the petitioner are proved to have been disengaged without following the process of law and in violation of Section 25-F of the Act.

24. When the services of the petitioner were disengaged, at the same time fresh hand namely Sh. Chiranji Lal (respondent No. 3) was engaged and said act of the respondent No. 1 is in violation of Section 25-H of the Act as no fresh hands could have been engaged without giving the retrenched workman an opportunity to join the duties. Thus violation of Section 25-H of the Act has also been established in this case. The petitioner appeared as PW5 in the witness box and has spoken about all these facts categorically in his affidavits Ext.PW5/B and Ext.P5B/1. He has leveled allegations to the effect that his services were terminated in order to accommodate the respondent No. 3 who is relative of the then Pradhan of the Panchayat. He was also subjected to cross-examine wherein he pleaded his ignorance to the suggestion that respondent No. 3 was appointed on regular basis since the year 2008. He denied that the then Pradhan of Panchayat was his relative as well. The respondent No. 3 did not conduct cross-examination on PW1 to PW4 for the reasons that they had spoken about formal facts and their cross-examination was not necessary. He also stated that he did not want to lead evidence on his part as the evidence was already led by the respondent No. 2.

25. Thus for the aforesaid oral and documentary evidence it is an established fact that the services of the petitioner were disengaged in violation of Sections 25-F and 25-H of the Act.

26. So far as the prayer of the petitioner in the claim petition to the effect that the engagement of respondent No. 3 be held as null and void and he be ordered be thrown out from the services is concerned, it may be stated here that the court being a Reference court has no original jurisdiction to decide anything. This court can not examine and adjudicate the facts beyond the scope of reference. Moreover, there is no provisions in the Industrial Disputes Act which would permit this court to declare the engagement of any workman as null and void and this court can pass no orders for the removal of any workman under the Act. All these prayers are beyond the scope of provisions of the Act and beyond the scope of the Reference received by this court for adjudication. The Reference received by this court is regarding the legality of the termination of the services of the petitioner *w.e.f.* 05-4-2008 without complying with the provisions of the Act and regarding the relief to which the petitioner was entitled to. For the reasons already record hereinabove, it has been held that the services of the petitioner were disengaged without complying the provisions of Section 25-F of the Act, and secondly, a fresh hand was engaged without giving preference to the petitioner and thus violation of Section 25-H of the Act was also done by the respondent No. 1. The petitioner is, therefore, entitled for his reinstatement by the respondent No. 1 and at the same time prayer of the petitioner to declare the engagement of the respondent No. 3 as null and void is rejected for the simple reasons that such a relief is beyond the scope of the Reference and the jurisdiction of this court. Such declaration can be given either by the Civil Court or in exercise of the writ jurisdiction and not by the Labour court under Industrial Disputes Act.

27. It may stated here that the engagement of the petitioner as well as respondent No.3 and other water-guards is purely in accordance with the Scheme and on the basis of terms and conditions of the Memorandum of Understanding signed between the respondent No. 1 and respondent No. 2. Neither the petitioner was working against any sanctioned post nor the respondent No. 3 is working against any sanctioned post. They are daily wagers and neither the petitioner was working against a regular post nor the respondent No. 3 has been engaged against the regular post. A daily wager worker works against no post and also holds no post. In such a situation, it can not be also said that there was any sanctioned or regular post of Water-Guard for Water Supply Scheme Bandhi. Memorandum of understanding specifically refers to engagement of persons by the Gram Panchayat in consultation with the Executive Engineer or the Assistant Engineer. Thus the Panchayat can engage any person or more than one person for one scheme as per the requirement. It is true that fresh hand has been engaged by the respondent No. 1 after wrongfully terminated the services of the petitioner yet this court is supposed to give the relief to the petitioner by directing his re-engagement and nothing more. This court is not supposed to given declaration regarding the status of the respondent No. 3 after this relief. For the sake of repetition, the respondent is also working on daily wages against no post as the petitioner was earlier working. Therefore the prayer of the petitioner that the services of the respondent No. 3 be ordered to terminate is liable to be rejected and no order is passed by this court in this reference. The number of the daily wagers to be engaged by any institution is not determined- by the number of sanctioned posts but the same is determined by the actual requirement of the institution to manage the work for which such daily wagers are engaged. This court, therefore, can also not said that the respondent No. 3 after the re-engagement of the petitioner has been rendered as excess. Such an exercise has to be undertaken by the employer *i.e.* the respondent No. 1. It is for the Panchayat concerned to examine whether the services of both the workmen are required for the operation of the Water Supply Schemes being operated by the respondent No. 1 or not. In case only one workman is required for the water Supply Scheme Bandhi even then the Panchayat can have recourse to the provisions of the Industrial Dispute governing the regulation of workmen who are in excess. Since the respondent No. 3 has also worked for more than 240 days in preceding twelve calendar months, his services can also not be dispensed with without taking the recourse to the relevant provisions of Industrial Dispute Act so that future litigation could be avoided. Issue No.1 is, therefore, decided accordingly.

Issue No. 2 :

28. Claim petition is maintainable because it has filed in support of the reference made by the appropriate Government, hence, this issue is decided against the respondent.

Issue No. 3 :

29. In view of the findings on the above issue No. 1 the petitioner has the cause of action, hence this issue is decided against the respondent.

Issues No. 4 and 5 :

30. In view of the findings on the above issue No. 1 the petitioner is proved to have approached the department at earliest by raising the demand by demand notice Ext.PW3/A and there is no delay on his part which could term as fatal. Both these issues are decided against the respondents.

Relief :

31. In view of my above discussions, the claim petition succeeds in part and is partly allowed. The respondent No. 1 is directed to reinstate the services of the petitioner forthwith. The petitioner is also held entitled for seniority and continuity in service from the date of his illegal termination except for the back wages as he has not led any evidence to show that he had not been working at all for past more than ten years and no work was given to him by any other employer on the ground that his services were dispensed with by the Gram Panchayat. Parties are left to bear their costs.

32. The reference is answered in aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette. File after due completion be consigned to the Record Room.

Announced in the open Court today, this 2nd day of September, 2022.

Sd/-
(HANS RAJ),
Presiding Judge,
Labour Court-cum-*Industrial*
Tribunal, Kangra at Dharamshala, H.P.

IN THE COURT OF SH. HANS RAJ, PRESIDING JUDGE, LABOUR COURT-CUM-**INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)**
(CAMP AT MANDI)

Ref. No. : 511/2016

Date of Institution : 23-08-2016

Date of Decision : 07-09-2022

Shri Dalip Singh s/o Shri Narad Thakur, r/o Village Anbla (Anoh), P.O. Bara, Tehsil Chachiot, District Mandi, H.P. . .*Petitioner.*

Versus

The Executive Engineer, HPSEBL, Division Gohar, District Mandi, H.P. . .*Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the petitioner : Sh. Rahul Thakur, Ld. Adv.

For the respondent : Sh. R. S. Rana, Ld. Adv.

AWARD

The following reference has been received from the appropriate Government for adjudication under section 10 (1) of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for short).

> "Whether alleged termination of services of Shri Dalip Singh s/o Shri Narad Thakur, r/o Village Anbla (Anoh), P.O. Bara, Tehsil Chachiot, District Mandi, H.P. *w.e.f.* 20-05-1996 by the Executive Engineer, HPSEBL, Division Gohar, District Mandi, H.P. who has worked as beldar on daily wages basis and has raised his industrial dispute vide demand notice dated 28-11-2014 after more than 18 years, allegedly without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, keeping in view of working period of 26 and 54 days during years 1995 and 1996 and delay of more than 18 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer/ management?"

2. The case of the petitioner is to the effect that he was engaged as beldar on daily wage basis *w.e.f.* 01-01-1995 and worked as such till 31-12-1996 when his services were orally terminated *w.e.f.* 01-01-1997. As per the petitioner, he has worked for 240 days in preceding 12 months of the calendar year and his termination could not have taken place orally and in violation to the provisions contained in Section 25-F of the Act. Junior workmen to the petitioner were retained and fresh hands were also engaged time to time and thus the respondent committed the violation of the provisions contained in Sections 25-G and 25-H of the Act. The petitioner approached the Hon'ble High Court of Himachal Pradesh by way of Writ Petition No.7322/2012 which was decided on 31-8-2012 and directions were issued to the respondent to engage the petitioner as a fresh hands in preference to new workman as and when work was available. Despite of this nothing was done and the petitioner, therefore, raised the demand and after conciliation the Reference has been made by the appropriate Government. In the aforesaid background, the petitioner has alleged that since the respondent has violated the provisions contained in Sections 25-F, 25-G and 25-H of the Act, therefore, the claim be allowed and his services be ordered to be re-engaged with all consequential benefits.

3. The respondent has resisted and contested the claim on the plea that the petitioner has no cause of action and he has also not come to the court with clean hands. Claim petition is said to be time barred. On merits, the respondent has pleaded that the petitioner was engaged on daily wage basis and worked *w.e.f.* 26-11-1995 to 25-5-1996 and that too without breaks and did not complete 240 days. The petitioner is said to have left the work at his own and his services were never terminated. It is also the case of the respondent that the petitioner did raise the claim for around two decades and thus his case was vitiated by delay and laches and he was not entitled to any relief.

4. The petitioner has filed rejoinder and reaffirmed the averments so made in the petition and denied those made in the reply.

5. On the pleadings of the parties, following issues were framed for determination on 26-9-2019:—

1. Whether termination of services of the petitioner *w.e.f.* 20-05-1996 by the respondent is illegal and unjustified, as alleged? . .*OPP.*

2. If issue No.1 is proved in affirmative to what service benefits the petitioner is entitled to? . .*OPP.*

3. Whether the petitioner has no cause of action and locus standi to file the present case, as alleged? . .*OPR.*

4. Whether the claim petition is time barred, as alleged? . .*OPR.*

5. Whether the petitioner has not come to the Court with clean hands and has suppressed the true and material facts from this Court, as alleged? . .*OPR.*

Relief.

6. I have heard learned counsel for the parties at length and considered the material on record.

7. For the reasons to be recorded hereinafter, the findings of this Court on the above issues are as under:—

Issue No. 1	: No
Issue No. 2	: Decided accordingly
Issue No. 3	: Partly yes
Issue No. 4	: Yes
Issue No. 5	: No
Relief.	: Petition is **dismissed** per operative portion of the Award.

REASONS FOR FINDINGS

Issues No. 1 & 4 :

8. Both these issues are taken up together for discussion and disposal as they are interlinked so as to avoid repetition of facts and evidence.

9. As per the settled law, the Industrial Disputes Act is a beneficial legislation meant to protect the workmen against all forms of exploitation at the hands of their employers. Being the beneficial legislation, its provisions lean towards the labour class and seek to alleviate them from all sort of sufferings at the hand of the resourceful employers. Since the parties can put forth their cases either themselves or through their representatives, who are not skilled in presenting their

cases like the professional advocates, therefore, the procedural rules are not strictly applicable before the labour court.

10. In the case in hand, the petitioner has alleged that he worked in between 01-01-1995 to 31-12-1996 with the respondent and completed minimum 240 working days in preceding twelve calendar months, and the respondent by terminating his services did not follow the procedure required under section 25 of the Act. The respondent, on the other hand, has disputed the alleged working days. The petitioner is said to have worked only for 80 days in between 26-11-1995 to 25-05-1996. The petitioner tendered his affidavit as Ext. PW1/A and copies of the Muster rolls as Ext. PW1/B1 and PW1/B2. The respondent, on the other hand has tendered the Mandays Chart as Ext. RW1/B. Copy of the muster-rolls Ext. PW1/B2 pertains to the month of April 1995. It is clear from the perusal of the same that name of the petitioner has been mentioned at Sl. No. 6 and has worked for 20 days in this month. There is no explanation for the same by the respondent. It is also not suggested to the petitioner that the copy of the muster-roll is a forged document and it does not belong to their department at all. Sh. Chandermani Sharma, Sr. Executive Engineer, who has sworn his affidavit as Ext. RW1/A has admitted the correctness of the copy of muster-roll Ext. PW1/B-2 when it was put to him in his cross-examination. This document, therefore, proves that the petitioner was not engaged for the first time in the month of November 2015 as is clear from the Mandays Chart, but he was working with the respondent even prior to the same. The Mandays Chart is, therefore, proved to be an incorrect document and it can not be relied in favour of the respondent. The petitioner alleges that his services were terminated on 31-12-1996, but the Mandays chart tendered on the record shows that the petitioner has worked only till 25-05-1996. As aforesaid, the Mandays chart is proved to be an incorrect document and can not be relied upon for any purpose. It is thus for the petitioner to prove his case by way of oral evidence.

11. The petitioner has appeared as PW1 in the witness-box and tendered his affidavit as Ext. PW1/A stating therein that he has worked for minimum 240 days with the respondent. The petitioner during his cross-examination has been shattered and has failed to maintain the contents of his affidavit. He has volunteered to speak at his own that he has worked with the respondent for about 200 days. While deposing so, he has himself axed his case. When the petitioner, as per his own version, has worked for total around 200 days with the respondent, then there is no question of completion of 240 days in the preceding twelve months. When this is so, there was no requirement of issuance of notice under section 25 F of the Act and payment of the compensation as per the spirit of section 25 F.

12. The further case of the petitioner is specific to the effect that at the time of the termination of his services orally, the workmen junior to him were retained. He has specifically named on Yashodhan in the petition as well as in the affidavit. There is no specific denial of this fact in the reply, but the respondent has come up with the case that the petitioner has himself left the services at his sweet will. The respondent has, therefore, taken up the plea of the abandonment of the job by the respondent. In this manner, it is for the respondent to prove this plea.

13. It is well-settled that the plea of abandonment of work is a technical plea and, in case, a workman absents himself from the work without any intimation, no presumption of his having abandoned the work can be drawn. The abandonment should always be in express form. In case, the workman absents all of sudden from the work, the employer is under an obligation to call the workman by way of notice and ask him to resume the work or justify his absence. Since the Act is meant to act in the benefit of the workmen, the notice issued by the employer to the absentee workman is supposed to apprise such a workman of the consequences of such absence so that the workman is able to protect his interest. In case, the workman after having received such a notice does not resume the work, then the employer must record his satisfaction in writing to the effect that despite of being informed and cautioned of the consequences of his absence, the workman has

not reported back to the work and such an act on his part amounted to abandonment of his work. Only thereafter the employer could proceed further to engage fresh hands in his place. In case such a procedure is not followed by the employer, he can not be permitted to take the plea of abandonment of the work by the workman.

14. In this case, it is neither pleaded nor proved by the respondent that any notice was served upon the respondent asking him to report to his duties. No notice was served upon the petitioner apprising him of the consequences, in case, he does not report back to the work. The petitioner left the work and the respondent took no steps to call him back. This is not an act of abandonment of work. The abandonment would have occurred in a situation when the petitioner had not reported back to work after he was informed by way of notice of the rights which he was to forfeit on his failure to report to work. The plea of abandonment is thus not established in this case.

15. In this background, the plea of the petitioner that the workmen junior to him were retained needs a discussion. The petitioner has Yashodhan etc. as workmen junior to him, who were not only retained, but their services have been regularized with the passage of time. This fact has been deposed by the petitioner in his affidavit Ext. PW1/A. The respondent being the employer as well as the custodian of the record should have specifically met this allegation and the evidence and explained the position. Since the petitioner has not given the complete address of Yashodhan nor named others, the respondent could not have produced the record pertaining to them. It was the duty of the petitioner to have given the complete address of this Yashodhan so that his identity could be established and record pertaining to him could be produced before the court. The petitioner has not even caused the seniority list of he workmen produced through the officials of the respondent so that this court could have gone through the same and verified the details of this Yashodhan. Thus bare vague allegations to the effect that the junior workmen were retained and the petitioner was retrenched can not be believed on their face value without better evidence to support the same. Thus the violation of section 25 G is also not established.

16. When the petitioner has failed to establish the violation of section 25 F and 25 G of the Act, he is not entitled for any relief. In such a situation, it is immaterial whether demand was raised on time or after a long time. Since the reference received by this court requires an adjudication on the fact whether the petitioner after having raised his demand after more than 18 years was entitled to any relief, therefore, the issue of delay has to be touched. The promptness in raising the demand by the workman is a very crucial factor, the court has to always weigh. The moment the dispute arises in which the major claim of reinstatement is involved, the workman should raise the demand at once without loss of time so that the matter is settled with promptness before the conciliation officer or referred to the court for prompt adjudication. The logic is simple on the insistence in raising the demand with promptness. In this manner the workman does not stay out of work for a longer period and the respondent is also not overburdened with the arrears of back wages. Above all, reinstatement of such a workman after giving him continuity in service and seniority over those who are already working, does not cause a sense of dissatisfaction amongst already working workmen. On the other hand, a workman, who sleeps over his rights and does not raise the demand with utmost promptness can not claim the relief of reinstatement as a matter of right. The court can in such cases mould the relief and grant compensation instead. The reasons for the delay are to be examined by the court before proceeding either way. In case, the delay is proved to have been caused not for the inaction on the part of the petitioner, the court can always take such a fact into account.

17. The petitioner, in this case, is out of work *w.e.f.* 1995 and the plea of abandonment of work taken by the respondent has failed. The petitioner has not taken any action till the year 2012. In the year 2012, he filed a CWP before the Hon'ble High Court being CWP No. 7322 of 2012. it

was decided in august 2012 itself with the direction that in case additional manpower was required by the respondent, preference shall be given to the petitioner. The respondent has also written a letter to the petitioner (Ext.PW1/D) intimating that there was no work available to engage fresh hands and the additional hands were not required. The demand was raised after two years in 2014. There is nothing on the record to show as to why the matter was not agitated after 1995 by the petitioner. The delay is abnormal and without any explanation as well as fatal. Since the relief claimed by the petitioner has been denied to him on the ground that no violation of the labour law has been established in this case. In view of this the issue of delay and latches has remained only academic. Thus both the issues are held against the petitioner.

Issue No.2, 3 & 5 :

18. All these issues are also taken up together. In view of findings on issues No. 1 & 4 above, the petitioner has no cause of action, though he has the locus-standi to file the claim as the Reference has been received in his name. No evidence has been led on the record by the respondent to prove that the petitioner has suppressed any material facts from this court. The petitioner is held not entitled for any relief in view of the detailed discussion made while deciding issues No. 1 & 4. therefore, issue No. 2 is held against the petitioner, issue No. 3 partly in favour of the petitioner and partly against him, and issue No. 5 against the respondent.

Relief :

19. In view of my discussion on the above issues, it is held that the petitioner has failed to prove that his services were terminated illegally and in violation to the provisions contained in 25-F and 25-G of the Act by the respondent. It is also held that the claim of the petitioner also is vitiated by the delay and latches. The claim petition is, therefore, dismissed. Parties are left to bear their own costs.

20. The reference is answered in aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette. File after due completion be consigned to the Record Room.

Announced in the open Court today, this 7th day of September, 2022.

Announced:
07-09-2022

Sd/-
(HANS RAJ),
Presiding Judge,
Labour Court-cum-*Industrial,*
Tribunal, Kangra at Dharamshala, H.P.
(Camp at Mandi)

IN THE COURT OF SH. HANS RAJ, PRESIDING JUDGE, LABOUR COURT-CUM-**INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)**
(CAMP AT MANDI)

Ref. No. : 901/2016

Date of Institution : 24-12-2016

Date of Decision : 07-09-2022

Shri Virender Kumar s/o Shri Luder Dutt, r/o Village Chhaprohal, P.O. Gagal, Tehsil Sadar, Dsitrict Mandi, H.P. . .*Petitioner.*

Versus

The Superintending Engineer, H.P.P.W.D. Division, 1st Circle, Mandi, District Mandi, H.P. . .*Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the petitioner : Sh. B.C. Sharma, Ld. Adv.

For the respondent : Sh. Subhash Chand, Ld. ADA

AWARD

The following reference has been received from the appropriate Government for adjudication under section 10 (1) of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for short).

"Whether termination of services of Shri Virender Kumar s/o Shri Luder Dutt, r/o Village Chhaprohal, P.O. Gagal, Tehsil Sadar, District Mandi, H.P. *w.e.f.* 28-11-2006 by the Superintending Engineer, H.P.P.W.D. 1st Circle, Mandi, District Mandi, H.P. without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer?"

2. The case of the petitioner, in brief, is to the effect that he is the diploma holder in computer technology and has proficiency in computers. He was engaged as a computer operator by the respondent *w.e.f.* January, 2003 on contractual basis on fixed wages of Rs. 3000/- and he worked in the aforesaid capacity in 1st Circle, HPPWD Mandi *w.e.f.* 01-01-2003 to 23-11-2006. The respondent released his salary only for the period of four months and salary for the rest 43 months was not paid at all which comes to Rs. 1,29,000/-. The petitioner approached the respondent authorities time and again requesting them to release his arrears of salaries. He even represented in writing but nothing was done. On 27-11-2006 when he requested the respondent for clearance of the aforesaid arrears he was dealt with in very inhuman manner and asked to not to report to his duties *w.e.f.* 28-11-2006 and his services were terminated without following the process and law *w.e.f.* 28-11-2006. He served a legal notice to the respondent but the same was not replied by the respondent. Even documents pertaining to his work were not supplied to the him and he was compelled to approach the State Information Commissioner, Shimla by way of appeal and in this manner relevant documents were supplied to him (petitioner). As per the petitioner, his services were terminated without following the process and law, and he therefore, was entitled for re-engagement and at the same time he was entitled for the back wages to the tune of Rs.1,29,000/-.

3. The respondent was summoned and after being served was represented by learned Deputy District Attorney. While going through the order sheet it becomes clear that reply was not filed by the respondent even after obtaining several dates. This court on 18-12-2019 proceeded to close the right of the respondent to file the reply and the defence was struck off. This order attained finality as it was not assailed by the respondent. There, is, therefore, no reply on the record.

4. In the abovesaid background, the issues were not framed and the petitioner was asked to lead the evidence. The petitioner appeared as PW1 and tendered his affidavit Ext.PW1/A. The petitioner has tendered on record copy of legal notice Ext.PW1/B and several documents Exts. PW1/B-1 to B-36 after having obtained under Right to information Act. He also tendered on record the copy of complaint Ext.PW1/C, copy of order dated 02-1-2010 Ext.PW1/D, copies of indents (paper requirements) Ext.PW1/E to Ext. PW1/Z and PW1/A-1 to Ext.PW1/A-36. The petitioner has examined one Shri Het Ram and Shri Mahinder Kumar as PW2 and PW3 in support of his case. The respondent led no evidence as no reply was filed.

5. When the material on the record is carefully examined, it becomes clear from the order-sheets that the respondent obtained several opportunities to file the reply to the claim but did not file the same. The court after being satisfied that despite of granting sufficient opportunities reply was not been filed for no sufficient case proceeded to struck off the defence on 18-12-2019. the order was not assailed and it attained finality. In this manner no reply to meet the case of the petitioner has been filed on the record.

6. When the claim petition is carefully examined, it becomes clear that the petitioner claims that he was engaged n contractual basis on the fixed wages of Rs. 3000/- per month as a computer operator by the respondent *w.e.f.* 01-01-2003 and worked as such till 27-11-2006 when his services were abruptly terminated *w.e.f.* 28-11-2006 without following the procedure. The Learned District Attorney has argued on the basis of such pleadings that a contractual employee can not be workman for the purpose of the Act and such an employee is governed by the provisions contained under section 2 (oo) (bb), hence it was not mandatory to comply with the provision contained in section 25 F of the Act.

7. To deal with this argument, the court has to examine the definition of the workman given in section 2(s) of the Act. This section no where restricts the definition of the workman to only those workmen, who are engaged on daily wage basis. It is clear from the bare perusal of the section that workman means any person (including an apprentice) employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward, whether the terms of employment be express or implied, and for the purposes of any proceeding under this Act in relation to an industrial dispute, includes any such person who has been dismissed, discharged or retrenched in connection with, or as a consequence of, that dispute, or whose dismissal, discharge or retrenchment has led to that dispute, but does not include any such person. In view of the above definition, the work of the computer operator is skilled as well as clerical work and such a person is included in the definition of a workman. This section does not disqualify a workman engaged on contract basis from being termed as a workman. The case of the petitioner also does not fall under any of the exceptions given in the definition. The petitioner was getting the fixed wages of Rs. 3000/- which are much less from Rs. Ten thousands as given in the exception. The Public Works Department is also included in the term industry and law to this effect is well settled. Reference may be made to the ruling of the Hon'ble Apex Court reported in **Des Raj** vs. **State of Punjab & Ors AIR 1988 SC 1182** where Irrigation department was held to be an "industry. The PWD department works on the same footings and the same test is applicable to the same. Hon'ble the Hon'ble Apex Court has dealt the same question in **State of Gujarat and another** Vs. **PWD Employees Union and others (2002) 10 SCC 147**, which reads as under:—

> "Having heard learned Senior Counsel Shri Dholakia for the appellant State we do not think that this is a fit case for our interference. The sole question is whether PWD is an industry, and therefore, governed under the Industrial Dispute Act. 1947. This question is squarely covered by a decision of the Constitution Bench in the case of Bangalore Water Supply & Sewerage Board *Vs.* A. Rajappa (1978) 2 SCC 213 : 1978 SCC (L&S) 215 : (1978) 3 SCR 207 : AIR 1978 SC 548. It is true that earlier a Bench of two learned Judges wanted this

decision to be reconsidered but that reference has been sent back by a larger Bench of this Court and the decision in case of Bangalore Water Supply & Sewerage Board *Vs.* A. Rajappa (1978) 2 SCC 213 : 1978 SCC (L&S) 215 : (1978) 3 SCR 207 : AIR 1978 SC 548 therefore holds the field. Consequently, this appeal does not survive any further for consideration of the aforesaid question. It is, therefore, dismissed.

8. In view of the aforesaid position the respondent herein is an industry for the purpose of this Act and the petitioner is a workman. Since the petitioner claims that his services have been terminated without following the process of the law, therefore, he has been able to prove that an industrial dispute has arisen in this case and the Reference could have been made to this court for an adjudication.

9. So far as the second argument is concerned, it is very much clear from the perusal of section 2(oo)(bb) of the Act that termination of the service of the workman as a result of the non-renewal of the contract of employment between the employer and the workman concerned on its expiry or of such contract being terminated under a stipulation in that behalf contained therein; or © termination of the service of a workman on the ground of continued ill-health is not covered within the preview of word 'retrenchment'. The respondent in this case has not filed the reply at all. Neither the terms of the contract have been pleaded nor the copy of such a contract has been placed on the record for the perusal of this court. Since the respondent is the custodian of the record, therefore, it was for the respondent to place on the record the documents. In this case neither the term of the contract is said to have expired nor it is the case of the respondent that the services of the petitioner were terminated in accordance with any of the stipulation of the contract. It is also not the case of the respondent that the petitioner suffered for ill-health. As aforesaid, no reply has been filed by the respondent at all. When such is the position, the case of the petitioner is not covered under section 2(oo)(bb) of the Act, and the argument is liable to be rejected.

10. Whether the respondent has filed reply to the claim petition or not, it is still for the petitioner to stand on his own legs and prove his case by leading evidence in support of the same. The petitioner has spoken on oath about his case in his sworn affidavit Ext. PW1/A. He has also tendered on record the notice issued by him as Ext. PW1/B. The petitioner was not supplied the record by the respondent which was necessary to prove his case, he therefore, made a complaint to the State Information Commissioner under RTI and the complaint has been tendered by him as PW1/C. The complaint was allowed and an order was passed to this effect. The petitioner has filed copy of the order as Ext. PW1/D on the record. The most important document to prove the case of the petitioner is the copies of indents (paper requirements) Ext.PW1/E to Ext. PW1/Z and PW1/A-1 to Ext.PW1/A-36. These copies of indents (paper requirements) prove that the petitioner was making such requirements in writing *w.e.f.* 21-02-2003 till 22-11-2006 so that he could do the official work on the computer allotted to him in the office. These requirements have been signed by the petitioner and all these requirements have been dealt with in the office and thereafter papers were issued to the petitioner and the petitioner again signed the same. These documents have come from the proper custody and there is no reason to disbelieve the same. All these papers have been supplied under RTI to the petitioner. These paper requirements shall be made by the petitioner in case, he was working for the respondent and doing the official work. Otherwise, no official papers shall be issued to stranger by the respondent. Since no reply was filed on behalf of the respondent, therefore, nothing has been said to meet this very important evidence by the respondent. These papers prove the case of the petitioner fully that he had worked with the respondent in between 2003 to 2006 and several paper rims were supplied to him from the office on his demand. The statement of the petitioner is fully corroborated by PW2 Sh. Het Ram, who has worked in the same office. One official witness Sh. Mohinder PW3, has though stated that the petitioner has worked with the respondent only for two months but has not been able to explain the position depicted in the papers indents discussed hereinabove. Thus the presence and working of the petitioner in the

office of the respondent is very much proved by the paper indents and the case of the petitioner is fully proved to the effect that he has worked as computer operator with the respondent *w.e.f* 1-1-2003 to 27-11-2006 as the last paper requirement was made by the petitioner on 21-11-2006, which is not only signed by him in the capacity of the computer operator but it has also been attested by the office while supplying the papers to him.

11. It may be stated here that the Act is a beneficial legislation meant to protect the workmen against all forms of exploitation at the hands of their employers. Being the beneficial legislation, its provisions lean towards the labour class and seek to alleviate them from all sort of sufferings at the hand of the resourceful employers. Since the parties can put forth their cases either themselves or through their representatives, who are not skilled in presenting their cases like the professional advocates, therefore, the procedural rules are not strictly applicable before the labour court.

12. By placing on the record various paper indents the petitioner has proved that he was in continuous service of the respondent during the aforesaid period and he has thus worked for more than 240 days in the twelve preceding months of the calendar year before his services were orally terminated by the respondent. Since the petitioner has been proved as a workman and the respondent as Industry for the purpose of the Act, the services of the petitioner could not have been terminated by the respondent without following the procedural provided under section 25 F of the Act. Thus the violation of section 25 F of the Act by the respondent is duly proved in this case.

13. It is not the case of the petitioner that any fresh hand was engaged in his place by the respondent. It is also not the case of the petitioner that any similarly situated workman junior to him has been retained by the respondent. Thus there is no violation of the provisions contained in section 25-G & 25-H of the Act. When such is the position, the relief of the reinstatement is not the appropriate remedy as the respondent can terminate the services of the petitioner again at any time by complying the provision contained in section 25 F of the Act and pay him the adequate compensation as there is no violation of section 25 G & 25 H of the Act.

14. In the aforesaid position, the ends of justice shall be served, in case, the respondent is directed to pay the compensation to the petitioner. By taking into account the length of the services rendered by the petitioner, his age and other factors, a compensation of Rs. 1,50,000/- shall be adequate. Apart from this, it is also proved that the petitioner has not paid the wages to the petitioner for 34 months which have been assessed as Rs.1,29,000/-. the petitioner is also held entitled for these back wages from the respondent. Thus the petitioner is held entitled to receive a sum of Rs. 2,79,000/- from the respondent as compensation and back wages. The reference is thus answered in the aforesaid terms.

Relief :

15. In view of my discussion, it is held that the petitioner has proved that his services were terminated illegally and in violation to the provisions contained in 25-F of the Act by the respondent and he was not paid the wages for a period of 43 months during his services with the respondent. The petitioner is, therefore, held entitled to receive a sum of Rs. 2,79,000/- from the respondent as compensation and back wages, which would be paid within four months by the respondent and from the date of receipt of Award failing which the respondent shall be liable to pay the interest @ 6% per annum on the said amount from the date of award till the date of its realization. The claim petition is, therefore, partly allowed. Parties are left to bear their costs.

16. The reference is answered in aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette. File after due completion be consigned to the Record Room.

Announced in the open Court today, this 7th day of September, 2022.

Announced:
07-09-2022

Sd/-
(HANS RAJ)
Presiding Judge,
Labour Court-cum-*Industrial*
Tribunal, Kangra at Dharamshala, H.P.
(Camp at Mandi).

IN THE COURT OF SH. HANS RAJ, PRESIDING JUDGE, LABOUR COURT-CUM-**INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)**
(CAMP AT MANDI)

Ref. No. : 464/2016

Date of Institution : 20-08-2016

Date of Decision : 07-09-2022

Shri Parkash Chand s/o Shri Krishan Chand, r/o Village and Post Office Dawahan, Sub Tehsil Kotli, District Mandi, H.P. . .*Petitioner.*

Versus

The Senior Executive Engineer, M&T Division H.P.S.E.B Ltd., Sunder Nagar, District Mandi, H.P. . .*Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the petitioner : Sh. Vikas Chander, Ld. Adv.

For the respondent : Sh. R.S. Rana, Ld. Adv.

AWARD

The following reference has been received from the appropriate Government for adjudication under section 10 (1) of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for short).

"Whether alleged termination of services of Shri Parkash Chand s/o Shri Kirshan Chand, r/o Village and Post Office Dawahan, Sub Tehsil Kotli, District Mandi, H.P. *w.e.f.* 26-4-1993 by the Senior Executive Engineer, M&T Division H.P.S.E.B. Ltd., Sunder Nagar, District Mandi, H.P., who had worked on daily wages and has raised his industrial dispute after 20 years *vide* demand notice dated 25-04-2013, without complying the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, keeping in view of delay of 20 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer/ management?"

2. The case of the petitioner is to the effect that he was engaged as a daily rated Class-IV employees by the respondent in the year 1992 and he worked as such till the year 1993 when his services were illegally terminated, whereas, his juniors were retained. Fresh hands were also engaged and the petitioner approached the respondent time and again but his services were not re-engaged, therefore, he raised the demand and the Reference was made by the appropriate Government. On such averments, the petitioner, has prayed for his re-engagement with all consequential benefits including seniority, continuity in service, back wages etc.

3. The respondent has resisted and contested the claim by taking several preliminary objections. On merits, it is denied that the petitioner has worked with the respondent in the year 1992 and 1993. It is explained that the petitioner was engaged as a daily waged beldar *w.e.f.* 26-02-1993 to 25-4-1993 and he worked for this short span of time with breaks on his own part and thereafter he (petitioner) has left the work at his own. When the cash books, muster rolls etc. were verified, it was found that the petitioner has worked only for 50 days and thus the provision contained in Section 25-F of the Act with regards to issuance of notice was not applicable. The demand was raised by him after long period and therefore, the claim was defeated by delay and laches on his part. On the aforesaid averments, the respondent has prayed for dismissal of the claim.

4. The petitioner has filed rejoinder and reaffirmed the averments so made in the petition and denied those made in the reply. It is submitted that information was obtained under RTI Act wherein the petitioner is shown to have worked for 26-12-1992 to 25-04-1993 and the mandays supplied by the respondent shows different picture, hence, it is proved that record has been incorrectly prepared by the respondent. It is submitted that the claim be allowed as the petitioner has worked for more than 240 days.

5. On the pleadings of the parties, following issues were framed for determination on 24-10-2019:—

1. Whether the termination of services of the petitioner by the respondent *w.e.f.* 26-04-1993 is/was illegal and unjustified, as alleged? . .*OPP.*

2. If issue No.1 is proved in affirmative, to what service benefits the petitioner is entitled to? . .*OPP.*

3. Whether the claim petition is not maintainable, as alleged? . .*OPR.*

4. Whether the claim petition is time barred, as alleged? . .*OPR.*

5. Whether the petitioner has no cause of action and locus standi to file the present case, as alleged? . .*OPR.*

6. Whether the petitioner has not approached the Court with clean hands and has suppressed true and material facts, as alleged? . .*OPR.*

7. Whether the petitioner is estopped by his act and conduct to file the present case, as alleged? . .*OPR.*

Relief.

6. I have heard learned counsel for the parties at length and considered the material on record.

7. For the reasons to be recorded hereinafter, the findings of this Court on the above issues are as under:—

Issue No. 1	: No
Issue No. 2	: Decided accordingly
Issue No. 3	: No
Issue No. 4	: No
Issue No. 5	: Partly yes
Issue No. 6	: No
Issue No. 7	: No
Relief.	: Petition is **dismissed** per operative portion of the Award.

REASONS FOR FINDINGS

Issue No. 1 & 4 :

8. Both these issues are taken up together for discussion and disposal as they are interlinked so as to avoid repetition of facts and evidence.

9. As per the settled law, the Industrial Disputes Act is a beneficial legislation meant to protect the workmen against all forms of exploitation at the hands of their employers. Being the beneficial legislation, its provisions lean towards the labour class and seek to alleviate them from all sort of sufferings at the hand of the resourceful employers. Since the parties can put forth their cases either themselves or through their representatives, who are not skilled in presenting their cases like the professional advocates, therefore, the procedural rules are not strictly applicable before the labour court.

10. In the case in hand, the petitioner has alleged that he was engaged by the respondent in the year 1992 and worked till 1993 regularly and completed minimum 240 working days in preceding twelve calendar months, and the respondent by terminating his services did not follow the procedure required under section 25 of the Act. The respondent, on the other hand, has disputed the alleged period. The petitioner is said to have worked only for 50 days in between 26-02-1993 to 25-04-1993. The petitioner tendered his affidavit as Ext. PW1/A and the attendant list as Ext. PW1/B. The respondent, on the other hand has tendered the copy of the payment chart as Ext. RW1/b, Mandays Chart as Ext. RW1/B. Copy of Mandays Chart RW1/C and copy of the muster rolls as Ext. RW1/D. When the attendance list tendered by the petitioner as Ext. PW1/B is carefully examined, it becomes clear from the perusal of the same that the petitioner is shown to have worked with the respondent *w.e.f* 26-12-1992 to 25-01-1993 for 30 days. He is shown to have worked with the respondent till 25-04-1993 and his total working days have been shown as 105. This document has also been issued by the respondent and the contents of this document go against the pleaded case of the petitioner which is to the effect that the petitioner has worked only for 50 days with the respondent. The respondent has also placed on the record copies of muster-rolls no. 152, 158 and 162 as Ext. RW1/B (three sheets). It is clear from the perusal of all these documents that the 19+6+25 total 50 days and was paid the wages for the same. This fact is further supported

by another letter addressed to Additional SE by the Assistant Engineer. This letter has been tendered on the record as Ext. RW1/C. This information is based on the scrutiny of the cash books pertaining to the period 26-01-1992 to 30-12-1994. This information also proves that the petitioner has worked only for 50 days with the respondent and the wages were paid to him accordingly. The copies of vouchers No. 188, 9 & 138 have also been tendered on the record as Ext. RW1/D (three-sheets). These vouchers have not been disputed by the petitioner as forged during the cross-examination conducted upon the respondents witness. There is no reasons to disbelieve the aforesaid official record produced for the inspection of the court. It is thus very much clear the attendance sheet prepared by the respondent (Ext. PW1/B) is an incorrect document prepared without consulting the cash-books. This attendance sheet showing the number of the working days of the petitioner as 105 can not be relied upon despite of the fact that it has been prepared by the officer fo the respondent itself for the simple reasons that its contents do not telly with the entries made in the copies of muster-rolls duly signed by the petitioner also. The muster-roll No. 152 shows the working days of the petitioner as 19, muster-roll No. 158 shows his working days as 6 and the last muster-roll No. 162 shows the working days as 25. All these muster-rolls carry the signatures of the petitioner while receiving the payments. The petitioner has nowhere disputed his signatures on these documents and these entries are also confirmed and corroborated by the extracts of the cash-books maintained in the regular course of the working in the office. There is no question of fabrication of the same for the purpose of this case. Although the document Ext. PW1/B is the document obtained from the respondent and obtained under RTI, but this can not be relied upon as it does not show the number of six working days anywhere, whereas, the muster-roll No. 158 shows that the petitioner has worked *w.e.f* 26-03-1993 to 31-03-1993 and received the payment of Rs. 132/- under his signatures. Had the document Ext. PW1/B been a correct document prepared after consulting the muster-rolls and the cash-book, it would have carried the entry of 6 working days as per muster-roll No. 158. Thus it is proved that the document Ext. PW1/B has been prepared without consulting the muster-rolls and the cash-book entries and wrong working days have been shown in the same. The petitioner can not be given any benefit of the incorrect document prepared by an officer of the respondent department when there is more authentic record on the file to show that the petitioner has worked only for 50 days and not for 105 days. In view of the aforesaid discussion, the document Ext. PW1/B is not relied by this court.

11. Even otherwise, if it is presumed for the sake of argument that the petitioner has worked for 105 days as depicted in the document Ext. PW1/B, still this fact will not attract the violation of section 25 F of the Act as 105 days can not be treated as 240 days for any stretch of imagination. The petitioners has also not placed reliance on this document Ext. PW1/B as he claims that he has worked for more than 240 days. In this situation, the petitioner was bound to lead better evidence to prove that these entries were also wrong and he had infact worked for more than 240 days in the preceding twelve calendar month. When the contents of the claim petition are carefully examined, it is clear that he has vaguely pleaded the period for which he has worked with the petitioner. He has pleaded that he was engaged in the year 1992 and worked till 1993. He has not even pleaded the names of the months in which he was engaged and terminated by the respondent. His affidavit tendered in evidence Ext. PW1/A is equally vague so far as the number of days is concerned. The petitioner has examined Shri Ishwar Dass as PW2 in the witness-box in support of his case. This witness claims to have worked in the same department for a long time. He has made a vague statement to the effect that the petitioner has worked as a beldar from 1992 to last month of 1994 or the beginning of 1995. This oral evidence is highly suspicious on the face of it. When it is the case of the petitioner himself that his services were terminated in the year 1993 itself by the respondent, the deposition of witness Shri Ishwar Dass to the effect that the petitioner has worked upto the last month of 1994 or the beginning of 1995 is false on the face of it. No reliance can be placed upon the testimony of this witness. This witness, therefore, does not strengthen the case of the petitioner in any manner. The respondent, on the other hand, has examined Shri Rajesh Kumar, Sr. Executive Engineer as RW1 in the witness-box. There is nothing in his cross-examination

which would prove that the petitioner has worked for more than 240 days in the preceding twelve calendar months at the time of termination of his services. Thus for the aforesaid reasons, the violation of section 25 F is not established.

12. The respondent has not even admitted that the services of the petitioner were orally terminated at any point of time. The respondent, on the other hand, has rather taken up the plea of the abandonment of the job by the respondent. In this manner, it is for the respondent to prove this plea. It is well-settled that the plea of abandonment of work is a technical plea and, in case, a workman absents himself from the work without any intimation, no presumption of his having abandoned the work can be drawn. The abandonment should always be in express form. In case, the workman absents all of sudden from the work, the employer is under an obligation to call the workman by way of notice and ask him to resume the work or justify his absence. Since the Act is meant to act in the benefit of the workmen, the notice issued by the employer to the absentee workman is supposed to apprise such a workman of the consequences of such absence so that the workman is able to protect his interest. In case, the workman after having received such a notice does not resume the work, then the employer must record his satisfaction in writing to the effect that despite of being informed and cautioned of the consequences of his absence, the workman has not reported back to the work and such an act on his part amounted to abandonment of his work. Only thereafter the employer can proceed further to engage fresh hands in his place. In case such a procedure is not followed by the employer, he can not be permitted to take the plea of abandonment of the work by the workman.

13. In this case, it is neither pleaded nor proved by the respondent that any notice was served upon the respondent asking him to report to his duties. No notice was served upon the petitioner apprising him of the consequences, in case, he does not report back to the work. The petitioner left the work and the respondent took no steps to call him back. This is not an act of abandonment of work. The abandonment would have occurred in a situation when the petitioner had not reported back to work after he was informed by way of notice of the rights which he was to forfeit on his failure to report to work. The plea of abandonment is thus not established in this case.

14. In this background, the plea of the petitioner that the workmen junior to him were retained needs a discussion. The petitioner has not named any person, who was engaged by the respondent after his termination. No evidence has been led to his effect. The petitioner could have summoned the officials from the respondent department with the record of the workmen engaged after the alleged date of his termination. Had any such effort been made by him, this court would have received an opportunity to examine the matter from this angle. No such effort was ever made by the petitioner. When he had not named any person, who was engaged as fresh hand by the respondent, the onus had never shifted upon the respondent to prove that no fresh hand was engaged. The petitioner has although examined Shri Ishwar Dass as PW2 and claimed that he was working in the department since long and has retired as Junior Engineer. This witness has also not named any person to have been engaged after the petitioner without giving an opportunity to the petitioner. He has simply stated that the beldars juniors to the petitioner namely S/Sh. Sham Lal, Harnam Singh and Hari Singh were regularized by the respondent later on with the passage of time. He has not stated of that these workmen were engaged after the termination of the petitioner. He has simply termed them as his junior. It means that they were already engaged while the petitioner was in service and for this reasons they became his juniors. Had he said that these three persons were engaged after the services of the petitioner were terminated, the position would have been different. Thus the petitioner has failed to prove that there has been violation of section 25 H of the Act by the respondent.

15. If the statement of Shri Ishwar Dass to the effect that three junior workmen to the petitioner were retained and the petitioner was not called back by the respondent is believed, the next question arises for consideration is as to what is the effect of this fact on the case of the petitioner? Whether it amounts to violation of the provision contained in section 25 G of the Act or not?

16. In my humble opinion, the failure of the plea of the abandonment on the part of the respondent can be used only when there is violation of section 25 F or section 25 H of the Act and it has no universal application. Had the petitioner worked for minimum 240 days in the preceding twelve calendar months, he was entitled for the benefit of the provision contained in section 25 F of the Act, as the plea of abandonment has failed. Such a benefit can not be extended by invoking the violation of section 25 G of the Act to the petitioner for the simple reason that the workmen junior to the petitioner were honestly performing their duties without any absence. In case, the petitioner had himself left the job, the respondent can not be expected to throw his juniors out of the job on the ground that the workman senior to them was absenting himself from the work. The provisions of the law can not be given negative interpretation and the honest workers can not be punished for the negligence or absence of their senior co-workers. Therefore, although the plea of abandonment taken by the respondent has failed yet the fact remains that the petitioner has himself left the work. Such an absentee petitioner can take the benefit of section 25 F and 25 H of the Act only and not of section 25 G. In case, the petitioner had worked for 240 days as per the requirement of the statute, the court could have held the violation of section 25 F on the failure of the plea of abandonment and granted the appropriate relief in his favour. In case, a fresh hands were engaged without re-engaging the petitioner, he could be again given the benefit of section 25 H of the Act as the plea of abandonment has failed. Such a petitioner, however, can not be given the benefit of section 25 G as he was not retrenched by way of oral or express orders of the employer by retaining his juniors. Failure of the plea of abandonment simply means that the respondent has failed to call such a petitioner back to work or to record a satisfaction to the effect that the petitioner despite of having been called back to report to his work has failed to report and thus was proved to have abandoned his job. The absence of the petitioner from his job can not be equated with the termination of his services either by written or oral orders of his employer, and therefore, the provision contained under section 25G can not be invoked by holding that once the petitioner had absented himself from the job the employer should have thrown out the workmen junior to him, who were honestly and punctually discharging their duties. For the aforesaid discussion, the petitioner can not take any advantage of the fact that the workmen junior to him were retained by the respondent. This plea regarding the violation of section 25G fails and is, therefore, rejected.

17. When the petitioner has failed to establish the violation of section 25 F and 25 G of the Act, he is not entitled for any relief. In such a situation, it is immaterial whether demand was raised on time or after a long time. Since the reference received by this court requires an adjudication on the fact whether the petitioner after having raised his demand after more than 20 years was entitled to any relief, therefore, the issue of delay has to be touched. The promptness in raising the demand by the workman is a very crucial factor, the court has to always weigh. The moment the dispute arises in which the major claim of reinstatement is involved, the workman should raise the demand at once without loss of time so that the matter is settled with promptness before the conciliation officer or referred to the court for prompt adjudication. The logic is simple on the insistence in raising the demand with promptness. In this manner the workman does not stay out of work for a longer period and the respondent is also not overburdened with the arrears of back wages. Above all, reinstatement of such a workman after giving him continuity in service and seniority over those who are already working, does not cause a sense of dissatisfaction amongst already working workmen. On the other hand, a workman, who sleeps over his rights and does not raise the demand with utmost promptness can not claim the relief of reinstatement as a matter of right. The court can in such cases mould the relief and grant compensation instead. The reasons for the delay are to be

examined by the court before proceeding either way. In case, the delay is proved to have been caused not for the inaction on the part of the petitioner, the court can always take such a fact into account.

18. The petitioner, in this case, is out of work *w.e.f.* 1993 and the plea of abandonment of work taken by the respondent has failed. The petitioner has not taken any action till the year 2013 when he raised the demand. There is nothing on the record to show as to why the matter was not agitated soon after 1993 by the petitioner. The delay is abnormal and without any explanation. The learned Counsel for the petitioner has tried to make out a case that the petitioner approached the respondent time and again and requested to re-engage him but he was put off on one or the other pretext. The learned Counsel has pointed out the cross-examination conducted upon Rw1 Shri Rajesh Kumar whereby he has pleaded his ignorance to the suggestions that the petitioner had approached the officers of the department time and again. It is for this court to examine the effect of such ignorance pleaded by the respondent. It may be stated here that the respondent in this case is not a private individual but an institution manned by officers, who are subject to transfer policy. The officers come and go in the institutions. In such a situation if anything has taken place orally during the tenure of one officer another officer, who has replaced him after his transfer can not reply any question pertaining to such an incident. Such a subsequent officer will naturally plead his ignorance to any such question and there is nothing abnormal in the same. No adverse inference can be drawn against such an officer. Had the question been specific and pertaining to the tenure of the RW1, his plea of ignorance would have become significant. Since no specific question was put to him pertaining to any thing that happened in between him and the petitioner, the position would have been different. Since the petitioner was dealing with an institution where everything is documents and the documents are kept as record, the petitioner should have represented in writing so that such a writing could be used later on. Such document has been placed on the record by the petitioner. When such is the position, it can be said that the petitioner approached the respondents time and again and requested for his re-engagement. Rather it is proved that the petitioner slept upon his rights for long 20 years and raised the demand in the year 2013 for the first time. The claim of the petitioner is also frustrated by the delay and latches, and he is not entitled for any relief. The petitioner has failed to prove issue No. 1. so far as issue No. 4 is concerned, it does not arise for consideration at all. Once the proceedings have been initiated on the basis of the Reference received from the appropriate Government, therefore, it can not be said that the claim is time barred as the claim has been filed in support of the Reference. Thus issue No. 4 is held against the respondent while maintaining the claim of the petitioner has also been vitiated by the delay and latches.

Issue No. 2, 3 & 5 to 7 :

19. All these issues are also taken up together. In view of findings on issues No. 1 &4 above, the petitioner has no cause of action, though he has the locus-standi to file the claim as the Reference has been received in his name. No evidence has been led on the record by the respondent to prove that the petitioner has suppressed any material facts from this court. The petition is also held as maintainable for the reasons that it has been field in support of the Reference received from the appropriate Government. There is no estoppel against the petitioner in filing the claim as it has been filed after the matter was referred by the appropriate government. The petitioner is held not entitled for any relief in view of the detailed discussion made while deciding issues No. 1 & 4. Therefore, issue No. 2 is held against the petitioner, issue No. 3 against the respondent, issue No. 5 partly in favour of the petitioner and partly against him, and issues No. 6 & 7 against the respondent.

Relief :

20. In view of my discussion on the above issues, it is held that the petitioner has failed to prove that his services were terminated illegally and in violation to the provisions contained in 25 F, 25-G & 25 H of the Act by the respondent. It is also held that the claim of the petitioner also is vitiated by the delay and latches. The claim petition is, therefore, dismissed. Parties are left to bear their own costs.

21. The reference is answered in aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette. File after due completion be consigned to the Record Room.

Announced in the open Court today, this 7th day of September, 2022.

Announced:
07-09-2022

Sd/-
(HANS RAJ)
Presiding Judge,
Labour Court-cum-*Industrial*
Tribunal, Kangra at Dharamshala, H.P.

IN THE COURT OF SH. HANS RAJ, PRESIDING JUDGE, LABOUR COURT-CUM-**INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)**

Ref. No. : 96/2017

Date of Institution : 28-03-2017

Date of Decision : 13-09-2022

Shri Mohinder Kumar s/o Shri Prem Lal, r/o Village Jukhrari, P.O. Bhadina Kothi, Tehsil & District Chamba, H.P. . .*Petitioner.*

Versus

1. The Principal, Government Senior Secondary School, Karina, District Chamba, H.P.

2. The District Project Officer, SSA/RMSA District Chamba, H.P. . .*Respondents.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the petitioner : Sh. Dharam Malhotra, Ld. Adv.

For the respondent(s) : Sh. Anil Sharma, Ld. Dy. D.A.

AWARD

The following reference has been received from the appropriate Government for adjudication under section 10 (1) of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for short).

"Whether termination of the services of Shri Mohinder Kumar s/o Shri Prem Lal, r/o Village Jukhrari, P.O. Bhadian Kothi, Tehsil & District Chamba, H.P. *w.e.f.* 01-11-2012 as alleged by the workman by (i) the Principal, Government Senior Secondary School, Karian, District Chamba, H.P. (ii) The District Project Officer, SSA/RMSA District Chamba, H.P., without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employers/management?"

2. The petitioner has averred in his claim that he was engaged as daily paid chowkidar by the respondent No. 1 through the Secretary of the School on 07-6-2012 and was paid wages @ Rs.3600/- per month. He worked as such till 01-11-2012 and his services were orally disengaged by the respondents despite of availability of work and funds and in violation of Section 25-F of the Act. Juniors and favourites of the respondent management were retained. The respondent No. 3 finally refused to re-engage the petitioner in December, 2013 compelling him to serve a demand notice on 17-12-2013. Conciliation took place but without any results and, in this manner, the present reference has been made by the appropriate Government. The petitioner has thus prayed for his re-engagement with all the benefits and regularization on completion of his eight years continuous service.

3. The respondents No. 1 to 3 have resisted and contested the petition on the averments that infact a complaint in writing was moved to SDM Chamba by a lady regarding misbehaviour and ill-treatment by the staff members of Kasturba Gandhi Balika Vidyalaya Hostel Karian with the children/inmates. Deputy Commissioner, Chamba ordered an inquiry into the matteron 07-06-2012 through SDM Chamba. It was further directed that pending inquiry into the matter the existing staff shall be relieved of their duties by asking them to proceed on leave. A time gap arrangement also ordered to be made and in compliance to this order dated 08-6-2012 the services of the petitioner along-with three cooks, helper and safaiwala were engaged purely as a stop-gap arrangement so that the affairs of the hostel could be smoothly run until the inquiry was completed. The petitioner was paid wages for the period he worked on temporary basis and in the meantime the inquiry was completed. The report thereof was submitted on 11-09-2012 to Deputy Commissioner, Chamba. Thereafter Deputy Director, Elementary Education vide letter No.1624 dated 17-10-2012 directed that the contract of the Hostel Warden be not renewed and strict warnings were issued to the rest of the staff to maintain discipline. In aforesaid background, the petitioner worked till 31-10-2012 and thereafter he was relieved of the temporary duties he was performing and the old staff came and joined their duties. As per the respondents, the petitioner had neither completed 240 days work nor any junior was retained and nor any fresh hand was engaged. On such averments, the respondent prayed for dismissal of the claim.

4. The petitioner has filed rejoinder and emphasized on the fact that he was engaged on 07-6-2012 and not after 08-6-2012 when alleged directions of Deputy Commissioner, Chamba were received to engage some officials purely on time gap basis. The petitioner has further emphasized that after the inquiry there were no directions to the respondents to disengaging the services of the petitioner and his disengagement was, therefore, wrong and against the statutory principles of the Act. The petitioner has further reiterated that his services were not as time gap arrangement and therefore, his services could not have been terminated in the alleged manner.

5. On the pleadings of the parties, following issues were framed for determination on 14-05-2019:—

1. Whether termination of services of the petitioner by the respondents *w.e.f.* 01-11-2012 is/was illegal and unjustified, as alleged? . .*OPP.*

2. If issue No. 1 is proved in affirmative, to what service benefits the petitioner is entitled to? . .*OPP*.

3. Whether the claim petition is not maintainable, as alleged? . .*OPR*.

Relief.

6. I have heard learned counsel for the petitioner as well as learned Deputy District Attorney for the respondents at length and considered the material on record.

7. For the reasons to be recorded hereinafter, the findings of this Court on the above issues are as under:—

Issue No. 1	: No
Issue No. 2	: Decided accordingly
Issue No. 3	: No
Relief.	: Petition is **dismissed** per operative portion of the Award.

REASONS FOR FINDINGS

Issue No.1:

8. The pleadings, when examined carefully, make it clear that there was in-fact a serious complaint of the staff members of the hostel and an inquiry was initiated into those allegations. All the staff members were directed to proceed on leave till the inquiry was completed and the services of the petitioner, three cooks, helper and safaiwala were engaged for the time being. It is an admitted fact that the services of the petitioner were engaged on 07-6-2012. The orders to engage a fresh staff during the inquiry were made on 08-6-2012 by the Deputy Commissioner.Certainly the services of the petitioner were engaged prior to these orders. Before the inquiry proceeded, order Ext. RW1/B was passed by Sub Divisional Magistrate, Chamba whereby the entire staff was directed to proceed on leave with immediate effect so that allegations against them could be fairly investigated. The inquiry report has also been placed on the record as Ext. RW1/D (14 pages) in which allegations against those staffers were found to have established and they were directed to observe discipline in future. One of the staff member was penalized and it was directed that his contract be not renewed further. The petitioner has also not disputed to all these facts.

9. It is also not disputed by the petitioner that the staff was asked to join their duties after the inquiry. It is also an admitted fact that the old staff joined their duties after the inquiry in which they were cautioned and reprimanded and directed to observe strict discipline while performing their duties. Thus the staff sent on forced leave was asked to join their duties. Such an act does not amount to re-engagement. It simply means that an inquiry was initiated against the staff members and in order to maintain impartiality and to rule out their influence in the same, they were asked to keep away by proceeding on mass forced leave. After the inquiry they were asked to join their duties. It does not amount to re-engagement but it was a kind of forced leave without pay. Since the hostel could not be closed as the girls/inmates were staying there, thus few persons were engaged for the time being so that they could run the hostel in the meantime. The petitioner is also one of them. The petitioner has appeared as PW1 in the witness box and his affidavit is Ext.PW1/A. He has not named any person who was engaged after him. He has not name any person who was re-engaged after his termination. Thus the petitioner has failed to prove that there was a violation of

Sections 25-G and 25-H of the Act in any manner. So far as Section 25-F is concerned, the petitioner has hardly worked for four months which comes approximately 120 days and the mandays chart filed on the record shows that he has worked for 147 day only. Thus he has never worked for a period of 240 days with the respondents at any point of time. When such is the position, the violation of Section 25-F of the Act is not even remotely attracted in this case. There was hardly any need to serve a notice upon him before dispensing with his services. It is not the case of the petitioner that the respondents required additional staff and he was engaged as an additional staff. He has also not come up with the case that the work of Chowkidar was not done earlier by any other workman. It is also not the case of the petitioner that the there was no post of the Chowkidar with the respondent and it was created for the first time at the time of his engagement. The petitioner (PW1) was subjected to cross-examination wherein he pleaded ignorance to most of the suggestions and he could not stand by the tests of the cross-examination. Shri Deepak Mahajan, Principal of the School appeared as RW1 and filed his affidavit Ext. RW1/A explaining everything in the same. He tendered on record some documents. Ext.RW1/C is the letter issued after completion of an inquiry whereby it was ordered that staff members of the hostel be issued strict directions to maintain discipline in their working. Ext.RW1/E is a report under Section 12(4). Ext.RW1/F is a complaint moved by name to Sub Divisional Magistrate, Chamba regarding the misbehaviour and maltreatment with the hostel inmates by the hostel staff which led to the inquiry. Ext.RW1/G is the details of honorarium paid to the workmen/staff engaged by the respondents to make the hostel functional after the staff to whom allegations were levelled was asked to proceed on mass leave. Ext. RW1/H is the similar document. Ext.RW1/J, Ext. RW1/K and Ext. RW1/L are also similar documents evidencing that payment made to the temporary staff. As per the Mandays chart Ext.RW1/M the petitioner worked for 147 days. This evidence also proves that the petitioners and others were engaged for the time being only in order to keep the hostel functional. This evidence also does not support the case of the petitioner.

10. Thus for the aforesaid detailed reasons, the petitioner has failed to prove the violation of the provisions contained in Sections 25-F, 25-G and 25-H of the Act by the respondents and this issue No. 1 is held decided against the petitioner.

Issue No. 2 :

11. In view of the discussions on the issue no.1, the petitioner is held not entitled for any benefits, thus issue No. 2 is also decided against the petitioner.

Issue No. 3 :

12. Since the claim petition has filed in support of the reference received from the appropriate Government, therefore, it can not said that claim is not maintainable, hence this issue is held decided against the respondents.

Relief :

13. In view of my discussion on the above issues, it is held that the petitioner has failed to prove that his services were terminated illegally and in violation to the provisions contained in 25-F, 25-G and 25-H of the Act by the respondents and as such the claim petition is, therefore, dismissed. Parties are left to bear their own costs.

14. The reference is answered in aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette. File after due completion be consigned to the Record Room.

Announced in the open Court today, this 13th day of September, 2022.

Sd/-
(HANS RAJ)
Presiding Judge,
Labour Court-cum-*Industrial*
Tribunal, Kangra at Dharamshala, H.P.

IN THE COURT OF SH. HANS RAJ, PRESIDING JUDGE, LABOUR COURT-CUM-**INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)**

Ref. No. : 688/2016

Date of Institution : 03-10-2016

Date of Decision : 14-09-2022

Shri Pawan s/o late Shri Rasalu, r/o Village Singhot, P.O. Bananter, Tehsil Churah, District Chamba, H.P. . . *Petitioner.*

Versus

1. The Director, M/s Ginni Global Limited, 2nd Floor, Shanti Chambar, 11/6-B, Pussa Road, New Delhi-110003 .

2. The Project Manager, Ginni Global Limited, Office at Village Kehluin, P.O. Bairagarh, Tehsil Churah, District Chamba, H.P. . .*Respondents* .

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the petitioner : Sh. O. P. Bhardwaj, Ld. Adv.

For the respondent(s) : Sh. N. L. Kaundal, Ld. AR
: Sh. Rajat Chaudhary, Ld. Adv.

AWARD

The following reference has been received from the appropriate Government for adjudication under section 10 (1) of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for short).

> "Whether the termination of the services of Shri Pawan s/o Late Shri Rasalu, r/o Village Singhot, P.O. Bananter, Tehsil Churah, District Chamba, H.P. by (1) The Director, M/s Ginni Global Limited, 2nd Floor, Shanti Chambar, 11/6-B, Pussa Road, New Delhi-110003 & (2) The Project Manager, Ginni Global Limited, Office at Kehluin, P.O. Bairagarh, Tehsil Churah, District Chamba, H.P. *w.e.f.* 27-07-2013 without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and amount of compensation the above aggrieved worker is entitled to from the above employers/Management?"

2. The petitioner has averred in his claim that he was engaged on muster roll basis as a Supervisor without any appointment letter on 01-01-2009 by the respondent and he worked in continuity till the date of his illegal termination. The petitioner has further averred that he completed work of 240 days in each calendar year and his services were discontinued without following the process provided under Section 25-F of the Act. The respondent company did not adhere to agreement entered with father-in-law of the petitioner whereby it was agreed at the time of giving land to the company that the services of the petitioner shall be engaged for a period of 40 years. The services of the petitioner were illegally and without following the procedure disengaged on 08-10-2013 despite of the fact that work was available with the respondent. The principle of 'last come first go' was also not followed as workmen junior to the petitioner were retained. At the same time, fresh hands were engaged and the petitioner was not given an opportunity for his re-engagement. The petitioner has claimed that he is unemployed after his illegal termination, and in these circumstances relief of re-engagement with all consequential benefits be granted to him and number of working days be considered as 160 days in place of 240 days as the area where the petitioner worked was tribal area.

3. The respondent has resisted and contested the claim petition and denied that the services of the petitioner were engaged *w.e.f.* 01-01-2009. It is clarified that the petitioner was engaged *w.e.f.* 01-07-2012 to 07-8-2013 and he had not completed 240 days. No junior to him was retained and no fresh hand was recruited as alleged. The petitioner absented himself from the services without any intimation and his services were never retrenched. The respondent has prayed for rejection of the claim petition.

4. The petitioner has filed rejoinder and reaffirmed the averments so made in the petition and denied those made in the reply. He has emphasized on the fact that had fictional breaks been given to him from time to time. Had such breaks been not given he would have become eligible for regularization, hence the petition be allowed.

5. From the pleadings of the parties and the language of the reference, following issues were framed for determination on 07-08-2019:—

1. Whether the termination of the services of the petitioner by the respondents *w.e.f.* 27-07-2013 is/was illegal and unjustified, as alleged? . .*OPP.*

2. If issue No. 1 is proved in affirmative to what service benefits the petitioner is entitled to? . .*OPP.*

3. Whether the claim petition is not maintainable in the present form as alleged? . .*OPR.*

4. Whether the petitioner has not approached to this court with clean hands, as alleged? . .*OPR.*

Relief.

6. I have heard learned counsel for the parties at length and considered the material on record.

7. For the reasons to be recorded hereinafter, the findings of this Court on the above issues are as under:—

Issue No. 1 : No

Issue No. 2 : Negative

Issue No. 3	: No
Issue No. 4	: No
Relief.	: Petition is **dismissed** per operative portion of the Award.

REASONS FOR FINDINGS

Issue No.1 :

8. The complete reading of the Reference under discussion refers to the date of wrongful termination of the petitioner as 27-7-2013. The petitioner in the claim petition has mentioned the date of his illegal retrenchment as 08-10-2013 in para No. 7. In other paras, he has referred that his services were illegally terminated in July, 2013. The petitioner has sworn his affidavit Ext.PW1/A in which the date of termination has been mentioned as August, 2013. The petitioner has examined Shri Lekho as PW2 in support of his case and he has sworn the affidavit to the effect that the petitioner has worked till July, 2013. The Mandays Chart prepared by the respondent has been tendered on the record as Ext.RW1/B in which the petitioner has been shown to have worked for 23 days in July, 2013. All these facts show that the petitioner has worked till July, 2013. Though there is variation in the pleadings and the evidence regarding date and month of termination but it does not make any difference as the petitioner is no more in service. The petitioner has alleged that his engagement with the respondent took place on 01-01-2009 whereas, the respondent has pleaded that the petitioner was engaged in the year 2012. This is a factual dispute which requires adjudication before the Reference is answered. The respondent has tendered on record the detail of attendance register of the petitioner as Ext.RW1/B. As per this attendance record, the petitioner has worked in the year 2009 for the months of September, 2009 to November, 2009 for total 62 days. This fact is also clear from another document Ext.RW1/C produced in the record by the respondent. The extract of the attendance register of the respondent has also been placed on the record which runs in several sheets. This document is Ext.RW1/D. It is clear from the first three sheets that the petitioner had worked from September, 2009 to 4th November, 2009 and thereafter he had absented throughout. There is no suggestion in the cross-examination of Shri Satish Singh (RW1) to assail this document. Since the attendance register is maintained in every establishment including the respondent, therefore, it is best document to be relied upon. It is therefore, clear from this document that the petitioner has worked for 62 days from 01-01-2009 to 04-11-2009. The respondent has not pleaded this fact in the reply for reasons best known. The respondent has pleaded that the services of the petitioner were engaged *w.e.f.* 01-7-2012 to 07-8-2013. Thus the petitioner has been able to prove from the evidence led by the respondent that he had worked for 62 days from 01-01-2009 to 04-11-2009 also. The plea of the respondent in the pleadings that the services of the petitioner were engaged *w.e.f.* 01-7-2012 to 07-8-2013 is wrong and the respondent has concealed material facts from this court by not pleading that the petitioner had worked from 01-01-2009 to 04-11-2009 for 62 days. This fact is established from the documents proved on the record by the respondent company itself.

9. The petitioner has although pleaded that he was engaged *w.e.f* 01-01-2009 by the respondent and worked in continuity till July, 2013 yet he has failed to prove this fact. The oral evidence of the petitioner is not sufficient to establish this fact. Similarly, statement of Shri Lekho (PW2) to the same effect is also not convincing as any person can speak anything in the court and such statement can not be relied upon when such a fact could be proved by documentary material. The petitioner should have summoned the attendance register of the respondent for the months of January, 2009 to September, 2009. He should have also summoned the attendance register of the respondent *w.e.f.* December, 2009 to December, 2011. The petitioner has not summoned any such

registers maintained by the respondent. On the other hand, the respondent has placed on record extract of the attendance register as Ext.RW1/D. The fourth sheet of this attendance register shows that the petitioner has worked in June, 2012 for one day and thereafter he is shown to have worked *w.e.f* July, 2012 to September, 2013 in continuity in other sheets. Thus extract of attendance register shows that petitioner has worked for 62 days in the year 2009 and thereafter from June, 2012 to September, 2013 he worked in continuity. This document is supplemented by Ext.RW1/B and Ext.RW1/C. It may be stated here petitioner has not marked his presence in between in the respondent company as no such record has been produced. As aforesaid, the petitioner should have summoned record from the respondent to prove that he was marking his presence throughout along-with other co-workers. Had any such record been summoned by the petitioner only then respondent was duty bound to produce the such records. The case of the respondent is very specific from the very beginning to the effect that the petitioner has not worked for the tenure as alleged by him. The respondent could not had led the evidence in the negative form. Since the extract of the attendance register shows that the petitioner remained absent from 4th November, 2009 and his presence came to be marked again in June, 2012 for one day and thereafter from July, 2012 to September, 2013, therefore, it is proved that the petitioner has worked with the respondent for 62 days in the year 2009 and 202 days in between June, 2012 to September, 2013. The petitioner is not proved to have worked in between in continuity. It is pertinent to mention here that this court being the court of Reference acquires jurisdiction from the Reference and this court has no independent jurisdiction to examine and adjudicate anything pleaded by the parties. When the present reference is carefully examined it is clear that it does not seek adjudication on time to time termination or the fictional breaks. It simply seeks adjudication on the point as to whether the services of the petitioner were orally terminated on 27-7-2013 without complying with the provisions of the Act or not. This court therefore, can not examine the material on the record relating to fictional breaks or time to time termination and this court also can not join both the periods together as there is no such reference from the Appropriate Government. The only fact that this court is supposed to adjudicate is regarding final termination of the petitioner.

10. The respondent has come up with the plea that the petitioner has left the work at his own in July, 2013. No notice etc. has been proved on the record by the respondent to prove that the attempt was made to call the petitioner back and join the duties. There is no document on the record to show that the petitioner was apprised of his rights and any action was taken against him for his willful absence. In the absence of any such material, the plea of abandonment can not succeed and the act and omission of the respondent in not calling the petitioner back and not recording findings to the effect that he has abandoned his work, has given birth to the presumption that the services of the petitioner were orally terminated. It is now for this court to examine whether the petitioner has worked for minimum 240 days prior to his illegal termination in the preceding twelve calendar months or not so as to attract the provisions of Section 25-F of the Act. When the pleadings and affidavit of the petitioner are subjected to scrutiny, it is clear that he has pleaded that he was working in the tribal area and therefore, he was supposed to complete 160 days of work in order to attract the provisions of Section 25-F of the Act. No evidence has been led by the petitioner on record to show that Bairagarh where the respondent company is situated in tribal area and only requirement was of 160 working days. Had it been a tribal area, the petitioner would have placed on record any such notification so that this court could act upon the same. Without there being any such material it can not be said that the petitioner was supposed to work for minimum 160 days to attract the provisions of Section 25-F. Rather the petitioner was supposed to work for minimum 240 days in the preceding 12 calendar months of his termination. When the document Ext.RW1/B is carefully examined it is clear that *w.e.f.* July, 2013 to August, 2012 (in reverse order) the petitioner has worked only for 201 days and thus he has not completed the work of 240 days. In such situation it was no requirement that compliance of the provisions of Section 25-F should have been done by the respondent. Thus there is no violation of the provisions of Section 25-F of the Act and the petitioner is not entitled to any relief on this aspect.

11. The petitioner has pleaded in a vague manner that juniors were retained and fresh hand were also recruited and there was violation of the provisions of Sections 25-G and 25-H of the Act by the respondent. No evidence has been led on this aspect. The petitioner should have named those workmen specifically so that the onus could be shifted upon the respondent. The petitioner should have called for the records of the respondent in evidence to prove that any workman junior to the petitioner was retained and after his services were terminated, fresh hands were engaged and thus violation of Sections 25-G and 25-H was done by the respondent. No such evidence has been led by the petitioner, hence, in the absence of categorical evidence on this aspect violation of Sections 25-G and 25-H is not established. So far as statement of Shri Satish Singh (RW1) is concerned, there is nothing in the same which would help the petitioner to prove his case. The statements of the petitioner and his witness also do not establish the violation of Sections 25-G and 25-H of the Act for the reasons already discussed hereinabove. Thus it is held that termination of the services of the petitioner are not proved in violation to any of the provisions of the Act. Issue No.1 is held decided against the petitioner.

Issue No.2 :

12. In view of the discussions on the issue No.1, the petitioner is held not entitled for any benefits, thus issue No. 2 is also decided against the petitioner.

Issues No.3 & 4 :

13. Since the claim petition has filed in pursuance to the reference received from the appropriate Government, therefore, claim petition is maintainable and petitioner has not concealed anything from this court. Rather the respondent has concealed material facts from the court by not pleading that the petitioner has worked for 62 days in the year 2009 with the respondent, hence both these issues are held decided against the respondent.

Relief :

14. In view of my discussion on the above issues, it is held that the petitioner has failed to prove that his services were terminated illegally and in violation to the provisions contained in 25-F, 25-G and 25-H of the Act by the respondent and as such the claim petition is, therefore, dismissed. Parties are left to bear their own costs.

15. The reference is answered in aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette. File after due completion be consigned to the Record Room.

Announced in the open Court today, this 14th day of September, 2022.

Sd/-
(HANS RAJ)
Presiding Judge,
Labour Court-cum-*Industrial*
Tribunal, Kangra at Dharamshala, H.P.

IN THE COURT OF SH. HANS RAJ, PRESIDING JUDGE, LABOUR COURT-CUM-**INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)**

Ref. No. : 40/2017

Date of Institution : 07-01-2017

Date of Decision : 16-09-2022

Shri Babu Ram s/o Shri Bansi Ram, r/o Village Kyan, P.O. Khurahal, Tehsil Sunder Nagar, District Mandi, H.P. . .*Petitioner.*

Versus

The Divisional Forest Officer, Suket Forest Division, Sunder Nagar, District Mandi, H.P. . .*Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the petitioner : Sh. Rajat Chaudhary, Ld. Adv.

For the respondent : Sh. Gaurav Keshav, Ld. Dy. D.A.

AWARD

The following reference has been received from the appropriate Government for adjudication under section 10 (1) of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for short).

"Whether alleged termination of the services of Shri Babu Ram s/o Shri Bansi Ram, r/o Village Kyan, P.O. Khurahal, Tehsil Sunder Nagar, District Mandi, H.P. during year, 1998 by the Divisional Forest Officer, Suket Forest Division, Sunder Nagar, District Mandi, H.P. who has worked as beldar on daily wages basis and has raised his industrial dispute *vide* demand notice dated 14-05-2015 after delay of about 17 years, without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, keeping in view of working period and delay of about 17 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer/management?"

2. The petitioner has averred in his statement of claim that he has worked as daily wage Beldar with the respondent in year 1998-1999 and completed 240 working days. In the month of September, 1998 theft of Cheel tree had taken place in village Sanehan and FIR was lodged whereafter the case remained pending in the court at Sundernagar for 10 years. The case was decided on 21-5-2010 and the petitioner was not involved in this case in any manner. As per the petitioner, his services were terminated by the respondent on the excuse that the case pertaining to the theft of Cheel tree was pending adjudication in Sundernagar court and his services shall be re-engaged as soon as the case is decided but nothing was done despite of the fact that five years have already passed. Such act and conduct on the part of respondent, as per the petitioner, amounted to unfair labour practice. The name of the petitioner was not even mentioned in the seniority list dated 31-03-2003 and out of 386 workmen at least 40 workmen were junior to him. The services of these workmen were regularized with the passage of time, but the services of the petitioner were not reengaged at all. The respondent put off the petitioner on one other pretext for many years and it was told that the record of the department was gutted in the fire and it was not possible to re-engage the petitioner. On such averments, the petitioner has alleged violation of the provisions of Sections 25-F & 25 G of the Act and it is submitted that petitioner is still unemployed and his services be ordered to re-engage with all the consequential benefits.

3. The respondent has resisted and contested the petition and denied the case of the petitioner in totality. As per the respondent, the petitioner has never worked as a daily wager at any point of time and therefore, there was no question of re-engaging his services. The petitioner was not an accused in the criminal case decided on 25-5-2010, hence, there was no reason to ask him to wait for the result of this case. It is submitted that since the petitioner has not worked even for a day with the respondent, therefore, there was no question of engaging any fresh hand or retaining any workman junior to him. It is submitted that the petitioner has no case at all, and therefore, the claim be dismissed.

4. The petitioner has filed rejoinder and reaffirmed the averments so made in the petition and denied those made in the reply.

5. On the pleadings of the parties, following issues were framed for determination on 30-11-2021:—

1. Whether termination of services of the petitioner by the respondent during year 1998 was/is illegal and unjustified, as alleged? . .*OPP.*

2. If issue No. 1 is proved in affirmative, to what amount of back wages, seniority, past service benefits and compensation, the petitioner is entitled to from the above employer/ respondent? . .*OPP.*

3. Whether the claim petition is not maintainable? . .*OPR.*

Relief.

6. I have heard learned counsel for the petitioner as well as learned Assistant District Attorney for the respondent at length and considered the material on record.

7. For the reasons to be recorded hereinafter, the findings of this Court on the above issues are as under:—

Issue No. 1	: yes
Issue No. 2	: decided accordingly
Issue No. 3	: No
Relief.	: Petition is **partly allowed** per operative portion of the Award.

REASONS FOR FINDINGS

Issue No.1:

8. The petitioner has sworn his affidavit Ext. PW1/A in support of his case and has relied of copy of judgment dated 21-5-2010 passed in criminal case by the court of Learned Judicial Magistrate 1st Class, Sundernagar as Ext.PW1/B. The petitioner has also relied upon the seniority list Ext.PW1/C. The respondent, on the other hand, has examined Shri Subhash Chand Prashar, Divisional Forest Officer, Suket as RW1. He has tendered on record his affidavit Ext.RW1/A and copy of Mandays Chart as Ext.RW1/B. He was also subjected to cross-examination in which he

admitted the correctness of a document Ext. PY being the information supplied by the respondent under RTI Act.

9. The Mandays Chart proved on record as Ext.RW1/B shows that the petitioner has not worked even for single day in between 1998 to 2003 with the respondent. This Mandays Chart is in accordance with the stand of the respondent taken in the reply. An application under Section 151 CPC was moved by the petitioner during the proceedings and reply to the same was filed by the respondent. Application was disposed of by this court *vide* order dated 29-4-2021. The applicant had submitted in the application that the petitioner has worked under Forest Guard Shri Sohan Lal in the year 1998-1999 and received wages, and therefore, his Mandays Chart be supplied to him. The respondent replied the application and submitted that the record/bill vouchers prior to the year 1999 to 2000 along-with other records and articles, was gutted in a fire incident that took place on 1st April, 2010, hence, no such record was available. This application was disposed of by the court on the basis of the reply filed by the respondent. When the contents of this application and reply filed thereto are kept in the mind, it becomes clear that the Mandays Chart Ext.RW1/B showing zero working days of the petitioner in the year 1998, 1999 and 2000 is a fictitious and a sham document on the face of it. The reasons are simple to support such findings. In case, the records pertaining to year 1998, 1999 and 2000 were destroyed in fire incident that took place in the year 2010, then how this Mandays Chart was prepared in the year 2019 when it was filed with the reply dated 9th April, 2019 in the court. Mandays Chart is prepared from the muster rolls. When the muster rolls for the year 1998 to 2003 were destroyed in the year 2010 then how this Mandays Chart could have been prepared? What are the basis for preparation of this Mandays Chart? It is no body's case that this Mandays Chart was prepared in the year 1998-1999 itself. Otherwise also, there was no occasion to prepare such a Mandays Chart in the year 1998, 1999 or before 2010 as the present Reference was received in the year 2016. Even the demand notice was given for the first time in the year 2015. The claim was filed after the Reference was received. It is only after this stage that the stage to file the reply had arrived. In such a situation, the Mandays Chart could have been prepared at the time when it was required to support the reply. Since the reply was filed in the year 2019 therefore, it is but natural that this document was prepared in the year 2019. When the total record was destroyed in the year 2010 how could this Mandays Chart be prepared in the absence of such record after 20 years of the alleged work. This Mandays Chart, therefore, is a incorrect and fictitious document on the fact of it. Ext. PY is the information sought under RTI Act and it is clear from the same that several complaints regarding incorrect Mandays Charts were made and there was disparity in the Mandays Charts being filed in the court and supplied to Labour Officers. Action was also taken on such lapses against the erring officials. For the reasons given hereinabove, no reliance can be placed on this Mandays Chart.

10. Once this court has come to a specific findings that this Mandays Chart is fictitious document and can not be relied upon, it can not be read in evidence. The petitioner still has to stand on his own legs and can not succeed on the strength of the weakness of the respondent. The petitioner has claimed that he has worked with the respondent in the year 1998 & 1999 for more than 240 days, and therefore, the onus is upon him to prove this fact in affirmative. In his statement of claim, the petitioner has pleaded that he has worked as a daily wage beldar with the respondent in the year 1998 & 1999. The petitioner remained mum for 17 years after his alleged termination and raised the demand for the first time in the year 2015. The petitioner has tried to explain this delay on the plea that since FIR was lodged in a theft case at Sundernagar and, the case remained pending for 10 years. Copy of the judgment of the criminal court has been tendered on the record as Ext.PW1/B. This petitioner was not an accused in this case. When the petitioner was not an accused in this case why his services shall be terminated by the respondent? Secondly, why the respondent shall persuade the petitioner to wait for the end result of the criminal case. There is no logic in the explanation offered by the petitioner for the delay in raising the demand. The criminal case was decided in the year 2010 and petitioner has not placed on record any material to show that he has

ever represented the respondent after 2010. The petitioner is proved to have kept mum for long 17 years and the demand was raised all of sudden in the year 2015. The delay has not been explained anywhere either in the pleadings or in the evidence. The delay is gross and unexplained. The effect of this delay on the claim of the petitioner is dealt in the succeeding para's as the Reference received from the appropriate government has sought an adjudication on the effects of the delay of 17 years in raising the demand.

11. Dealing with the plea of the petitioner that he has worked in continuity for more than 240 days before his alleged termination, it may be stated that there are variations in between the pleadings and the statement of the petitioner recorded on oath. In the claim, he has vaguely pleaded that he had worked in the year 1998-1999 with the respondent and thereby completed 240 working days preceding his termination. The language of the Reference make it clear that the alleged termination of the petitioner took place in the year 1998. In the rejoinder, the petitioner again pleaded vaguely that he has worked in the year 1998-1999. While leading the evidence, the petitioner changed his stand. In his affidavit Ext.PW1/A he pleaded in para No.1 itself that he was engaged in the year 1998 by the respondent and he worked till year 1998. In para No.3, he has more specifically referred the period of his engagement as year 1998 to September, 1998. Thus averments of the petitioner in the claim that he had worked in the year 1998-1999 are not even supported by the evidence led by him.

12. In the aforesaid background, in case, the statement of the petitioner is relied upon, it can be said that the petitioner has at the most worked in the year 1998 only with the respondent and his services were terminated in September 1998. Since the respondent has specifically denied the case of the petitioner and pleaded that the petitioner has not worked even for a single day as a daily wage, therefore, it was for the petitioner to lead further evidence to corroborate his self-serving testimony. The petitioner has not examined any other witness to depose about the fact that he had also witnessed the petitioner working for the respondent in the capacity of a daily wage beldar. No family member, relative or the villager has been examined by the petitioner to prove this fact. The petitioner has, therefore, not led oral evidence to corroborate his self-serving statement.

13. The petitioner, however, has led documentary evidence to lend corroboration to his case. He has placed heavy reliance upon the copy of copy of the judgment dated 25-6-2010 delivered by the court of Ld. Judicial Magistrate 1st Class, Court No.1 Sundernagar as Ext.PW1/B. It is argued that the petitioner has lodged an FIR at the instance of the respondent and in the capacity of a workman of the respondent when theft of a Cheel tree has taken place in the jungle. It is further argued that the petitioner has also appeared as a witness on behalf of the respondent in the criminal case and this fact prove that he was the workman of the respondent at that time. On the strength of this document, it is argued that the petitioner has been able to corroborate his case by documentary evidence and, therefore, he is entitled for the relief claimed.

14. It is settled law that the judgment of criminal court is relevant only for limited purpose. The only relevancy of such judgment is to ascertain whether the accused was acquitted or convicted. No other findings of the criminal court can be used in civil proceedings as civil cases are to be decided on their own facts, evidence and merits. The judgment of the criminal court is not binding upon the civil court. It was held by the Hon'ble Supreme court in **Karamchand Ganga Pershad & Anr.** vs. **Union Of India & Anr, reported in AIR 1971 SC 1244** in Para No. 4 that it is a well established principle of law that the decisions of the civil courts are binding on the criminal courts but the converse is not true. Therefore, as per the settled law, the judgment delivered in a criminal case proved on the record as Ext.PW1/B is relevant to know the end result of the trial and nothing more. All the accused were acquitted by the criminal court of the offence under section 33 of IF Act and 379, 341, 353, 332, 336, 506 IPC. The findings to this effect can be looked into in any civil case including the present claim petition.

15. It may be stated here that as per the settled law referred hereinabove, the prohibition lies in relying upon the findings/decision of the criminal court by the civil court. Finding/decision is the conclusion drawn by the court after examining the facts, law and evidence. The findings do not include the pleadings of the parties in a complaint case and the contents of the charge-sheet or the FIR or any other document filed with the charge-sheet and referred to by the criminal court in the judgment. Such pleadings and contents of the charge-sheet/FIR can be relied upon by the civil court against the party to whom the same belongs unless the same are explained away in the civil proceedings either in the pleadings or during the evidence.

16. This court, therefore, can make limited use of the contents of the judgment delivered by the criminal court copy whereof has been placed on the record as Ext. RW1/B. In para No. 8 of this judgment, it has been recorded by the learned criminal court that PW1 Babu Ram, the complainant, has stated that he was the Chowkidar in the forest department and he was deputed in forest Snain alongwith Hari Ram, Babu Ram, Nathu and Prakash. In the opening para of the judgment, it has been mentioned that the complainant reported the matter to the police and disclosed that he belonged to village Sanehan. It has been further mentioned that in the FIR, he has reported that he, Babu Ram, Sant Ram, Sihnu Ram, and Prakash Chand are working in the forest department on daily wages for past 4-5 months. The further facts mentioned in the FIR have also been reproduced by the learned criminal court in the opening para of the judgment to the effect that on 05-09-1998 all these forest workers were deputed to visit the house of one Ram Lal and bring the stolen logs of Cheel tree. All these workers were assaulted by the accused persons and thus the FIR was lodged by the present petitioner. It is clear from the opening para of the judgment that after lodging of the FIR, investigation took place in the matter and charge-sheet was filed against the assailants for the aforesaid offences after collecting several documents. The present petitioner has been referred to as the complainant in the judgment and his statement was recorded in the court. The guilt of the accused was not established on merits beyond every reasonable doubts, and they were acquitted at the end of the trial.

17. Sh. Subash Chand Prashar, the Divisional Forest Officer appeared as RW1 in the witness-box and tendered his affidavit as Ext. RW1/A. He has himself made a reference of the criminal case and has also filed copy of the judgment of the criminal court. He has further stated in this affidavit that the petitioner was not an accused in that case. He has not explained the things further. When he was subjected to the cross-examination, he stated specifically that he was well conversant with the judgment delivered in the criminal case, Ext. PW1/B. He further admitted that the petitioner was produced as a witness in this criminal case. He has further admitted that the petitioner was introduced as the daily wage beldar of the respondent. These admission are sufficient to lend corroboration to the uncorroborated statement of the petitioner made by him on oath. It is thus very much proved that the petitioner has appeared as a witness in this criminal case as a daily paid beldar of the respondent department and he had also set the criminal law into motion by lodging the FIR against the accused. He was beaten up with other Beldars and the accused persons were tried for causing hurt to the public servants. The RW1 Sh. Subash Chand Prashar has not explained at all as to why the petitioner was asked to lodged the FIR on behalf of the respondent, in case, he was not the daily paid beldar.

18. RW1, Sh. Subash Chand Prashar has nowhere explained as to why action was not taken against this petitioner for impersonating as daily wage beldar of respondent department while lodging the FIR. There is no explanation on the record to show as to why the department did not inform the police during the investigation of FIR that this Babu Ram was not their employee. The learned criminal court has framed charges against the accused person for offence under Sections 353 and 332 IPC for causing hurt to the petitioner and another Babu Ram s/o Padmu and others, the public servants. Such charges are framed by criminal court when there is sufficient material on the record to suggest the person assaulted was a public servant. It is recorded by the learned criminal

court in the judgment Ext.PW1/B that copy of muster roll was also placed on the record of the police as Mark-E but the same was not proved. It is thus clear that name of the petitioner and others were appearing on the muster rolls handed over to the police by the respondent department during the investigation and for these reason the learned criminal court framed the charges under Sections 332 and 353 IPC against the accused o being satisfied that the petitioner and others were public servants. Once Sh. Subash Chand Prashar (RW1) has admitted that the petitioner has appeared as witness before the learned criminal court as beldar of the respondent, this admission is sufficient to corroborate the case of the petitioner. Furthermore, the facts mentioned in the charge sheet and reproduced by the learned criminal court in the opening part of the judgment are relevant to prove that petitioner was a daily paid beldar with the respondent in the year 1998 and for these reasons he lodged the FIR when an offence of assault of public servant was committed by those accused persons. All these facts corroborate the case of the petitioner and at least it is proved that in the year 1998 he has worked as a daily paid beldar with the respondent. It was disclosed by the present petitioner while lodging the FIR Ext.PW20/A that they were working with forest department on daily wage basis for last 4 to 5 months. Such reference has come in the opening portion of the judgment of the learned criminal court. This FIR was lodged in the month of September, 1998. Thus the petitioner is proved to have worked for 4 to 5 months with the respondent as he claims that his services were terminated in September, 1998. Since 4 to 5 months do not make 240 days therefore, the petitioner has failed to prove that there was violation of Section 25-F of the Act at the time when his services were terminated. The petitioner has further filed on record the Seniority List Ext.PW1/C and it is clear from the perusal of the same that after the year 1998 several fresh hands were engaged by the department. Once the petitioner is proved to have worked as beldar with the respondent in the year 1998, his being out of job after the year 1998 itself amounts to his termination as the respondent has denied his engagement unsuccessfully. In such a situation, the petitioner should not have been given an opportunity to join the work. The department not give any opportunity to the petitioner to join the work. The respondent rather disclaimed the petitioner as their employee and came up with the case that petitioner had not worked even for a single day with the department. Not only this, the respondent filed a fictitious Mandays Chart showing that petitioner has worked for zero days in the year 1998, 1999 and 2000 etc. Since fresh hand are proved to have been engaged after the year 1998 by the respondent without giving priority to the petitioner, it is held that the respondent has violated the provisions contained in Section 25-H of the Act.

19. The next question that arises for determination whether the petitioner is entitled for reinstatement or for any other alternative relief. No doubt there is violation of Section 25-H of the Act yet the conduct of the petitioner is also very discouraging. He is proved to have remained mum for around 17 years and raised the demand at very belated stage without showing a sufficient cause for such a lethargy. The plea of the petitioner that since the criminal case was pending and he was advised to raise the demand after the adjudication of the same has already been rejected and discussed hereinabove. No such excuse could have been made by the petitioner when he was not an accused in the aforesaid case. The delay on the part of the petitioner is inordinate, gross and without any reasonable and sufficient cause. In these facts and circumstances granting the relief of reinstatement shall not possible in view of the settled law of the land to the effect that when a petitioner goes in slumber for several years and does not fight for his right at earliest, he can not claim his reinstatement as a matter of right and the court should mould the relief towards compensation rather than reinstatement. The petitioner is, therefore, held entitled for the alternative relief of compensation in this case. Taking into account the, number of working days, age of the petitioner and other attending facts and circumstances a sum of ₹60,000/- shall be sufficient to compensate the petitioner for the wrong done to him. Issue no.1 is answered partly in favour of the petitioner.

Issue No. 2:

20. In view of the discussions on the issue No. 1, the petitioner is held entitled for compensation of ₹ 60,000/- hence, issue No. 2 is also decided in favour of the petitioner.

Issue No.3:

21. Since the claim petition has been filed in pursuance to the reference received from the appropriate Government, therefore, claim petition is maintainable, hence this issue is held decided against the respondent.

Relief :

22. In view of my discussion on the above issues, it is held that that the respondent has violated the provision contained in Section 25-H of the Act, but taking into the account the delay and latches on the part of the petitioner he is held entitled for compensation to the tune of ₹60,000/- (Rupees sixty thousand only), which would be paid within four months by the respondent and from the date of receipt of Award failing which the respondent shall be liable to pay the interest @ 6% per annum on the said amount from the date of award till the date of its realization. Parties are left to bear their costs.

23. The reference is answered in aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette. File after due completion be consigned to the Record Room.

Announced in the open Court today, this 16th day of September, 2022.

Sd/-
(HANS RAJ)
Presiding Judge,
Labour Court-cum-*Industrial*
Tribunal, Kangra at Dharamshala, H.P.

IN THE COURT OF SH. HANS RAJ, PRESIDING JUDGE, LABOUR COURT-CUM-**INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)**

Ref. No. : 39/2017

Date of Institution : 07-01-2017

Date of Decision : 16-09-2022

Shri Prakash Chand s/o Shri Sallo Ram, r/o Village Kyan, P.O. Khurahal, Tehsil Sunder Nagar, District Mandi, H.P. . .*Petitioner.*

Versus

The Divisional Forest Officer, Suket Forest Division, Sunder Nagar, District Mandi, H.P. . .*Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the petitioner : Sh. Rajat Chaudhary, Ld. Adv.

For the respondent : Sh. Gaurav Keshav, Ld. Dy. D.A.

AWARD

The following reference has been received from the appropriate Government for adjudication under section 10 (1) of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for short).

> "Whether alleged termination of the services of Shri Prakash Chand s/o Shri Sallo Ram, r/o Village Kyan, P.O. Khurahal, Tehsil Sunder Nagar, District Mandi, H.P. during year, 1998 by the Divisional Forest Officer, Suket Forest Division, Sunder Nagar, District Mandi, H.P. who has worked as beldar on daily wages basis and has raised his industrial dispute *vide* demand notice dated 14-05-2015 after delay of about 17 years, without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, keeping in view of working period and delay of about 17 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer/management?"

2. The petitioner has averred in his statement of claim that he has worked as daily wage Beldar with the respondent in year 1998-1999 and completed 240 working days. In the month of September, 1998 theft of Cheel tree had taken place in village Sanehan and FIR was lodged whereafter the case remained pending in the court at Sundernagar for 10 years. The case was decided on 21-5-2010 and the petitioner was not involved in this case in any manner. As per the petitioner, his services were terminated by the respondent on the excuse that the case pertaining to the theft of Cheel tree was pending adjudication in Sundernagar court and his services shall be re-engaged as soon as the case is decided but nothing was done despite of the fact that five years have already passed. Such act and conduct on the part of respondent, as per the petitioner, amounted to unfair labour practice. The name of the petitioner was not even mentioned in the seniority list dated 31-03-2003 and out of 386 workmen at least 40 workmen were junior to him. The services of these workmen were regularized with the passage of time, but the services of the petitioner were not reengaged at all. The respondent put off the petitioner on one other pretext for many years and it was told that the record of the department was gutted in the fire and it was not possible to re-engage the petitioner. On such averments, the petitioner has alleged violation of the provisions of Sections 25-F & 25 G of the Act and it is submitted that petitioner is still unemployed and his services be ordered to re-engage with all the consequential benefits.

3. The respondent has resisted and contested the petition and denied the case of the petitioner in totality. As per the respondent, the petitioner has never worked as a daily wager at any point of time and therefore, there was no question of re-engaging his services. The petitioner was not an accused in the criminal case decided on 25-5-2010, hence, there was no reason to ask him to wait for the result of this case. It is submitted that since the petitioner has not worked even for a day with the respondent, therefore, there was no question of engaging any fresh hand or retaining any workman junior to him. It is submitted that the petitioner has no case at all, and therefore, the claim be dismissed.

4. The petitioner has filed rejoinder and reaffirmed the averments so made in the petition and denied those made in the reply.

5. On the pleadings of the parties, following issues were framed for determination on 30-11-2021:—

1. Whether termination of services of the petitioner by the respondent during year 1998 was/is illegal and unjustified, as alleged? . .*OPP.*

2. If issue No. 1 is proved in affirmative, to what amount of back wages, seniority, past service benefits and compensation, the petitioner is entitled to from the above employer/ respondent? . .*OPP.*

3. Whether the claim petition is not maintainable? . .*OPR.*

Relief.

6. I have heard learned counsel for the petitioner as well as learned Assistant District Attorney for the respondent at length and considered the material on record.

7. For the reasons recorded hereinafter, the findings of this Court on the above issues are as under:—

Issue No. 1	: yes
Issue No. 2	: decided accordingly
Issue No. 3	: No
Relief.	: Petition is **partly allowed** per operative portion of the Award.

REASONS FOR FINDINGS

Issue No. 1 :

8. The petitioner has sworn his affidavit Ext. PW1/A in support of his case and has relied of copy of judgment dated 21-5-2010 passed in criminal case by the court of Learned Judicial Magistrate 1st Class, Sundernagar as Ext.PW1/B. The petitioner has also relied upon the seniority list Ext.PW1/C. The respondent, on the other hand, has examined Shri Subhash Chand Prashar, Divisional Forest Officer, Suket as RW1. He has tendered on record his affidavit Ext.RW1/A and copy of Mandays Chart as Ext.RW1/B. He was also subjected to cross-examination in which he admitted the correctness of a document Ext. PY being the information supplied by the respondent under RTI Act.

9. The Mandays Chart proved on record as Ext.RW1/B shows that the petitioner has not worked even for single day in between 1998 to 2003 with the respondent. This Mandays Chart is in accordance with the stand of the respondent taken in the reply. An application under Section 151 CPC was moved by the petitioner during the proceedings and reply to the same was filed by the respondent. Application was disposed of by this court vide order dated 29-4-2021. The applicant had submitted in the application that the petitioner has worked under Forest Guard Shri Sohan Lal in the year 1998-1999 and received wages, and therefore, his Mandays Chart be supplied to him. The respondent replied the application and submitted that the record/bill vouchers prior to the year 1999 to 2000 along-with other records and articles, was gutted in a fire incident that took place on 1st April, 2010, hence, no such record was available. This application was disposed of by the court on the basis of the reply filed by the respondent. When the contents of this application and reply filed thereto are kept in the mind, it becomes clear that the Mandays Chart Ext.RW1/B showing zero working days of the petitioner in the year 1998, 1999 and 2000 is a fictitious and a sham

document on the face of it. The reasons are simple to support such findings. In case, the records pertaining to year 1998, 1999 and 2000 were destroyed in fire incident that took place in the year 2010, then how this Mandays Chart was prepared in the year 2019 when it was filed with the reply dated 9th May, 2019 in the court. Mandays Chart is prepared from the muster rolls. When the muster rolls for the year 1998 to 2003 were destroyed in the year 2010 then how this Mandays Chart could have been prepared? What are the basis for preparation of this Mandays Chart? It is no body's case that this Mandays Chart was prepared in the year 1998-1999 itself. Otherwise also, there was no occasion to prepare such a Mandays Chart in the year 1998, 1999 or before 2010 as the present Reference was received in the year 2016. Even the demand notice was given for the first time in the year 2015-16. The claim was filed after the Reference was received. It is only after this stage that the stage to file the reply had arrived. In such a situation, the Mandays Chart could have been prepared at the time when it was required to support the reply. Since the reply was filed in the year 2019 therefore, it is but natural that this document was prepared in the year 2019. When the total record was destroyed in the year 2010 how could this Mandays Chart be prepared in the absence of such record after 20 years of the alleged work. This Mandays Chart, therefore, is a incorrect and fictitious document on the fact of it. Ext. PY is the information sought under RTI Act and it is clear from the same that several complaints regarding incorrect Mandays Charts were made and there was disparity in the Mandays Charts being filed in the court and supplied to Labour Officers. Action was also taken on such lapses against the erring officials. For the reasons given hereinabove, no reliance can be placed on this Mandays Chart.

10. Once this court has come to a specific findings that this Mandays Chart is fictitious document and can not be relied upon, it can not be read in evidence. The petitioner still has to stand on his own legs and can not succeed on the strength of the weakness of the respondent. The petitioner has claimed that he has worked with the respondent in the year 1998 & 1999 for more than 240 days, and therefore, the onus is upon him to prove this fact in affirmative. In his statement of claim, the petitioner has pleaded that he has worked as a daily wage beldar with the respondent in the year 1998 & 1999. The petitioner remained mum for 17 years after his alleged termination and raised the demand for the first time in the year 2015. The petitioner has tried to explain this delay on the plea that since FIR was lodged in a theft case at Sundernagar and, the case remained pending for 10 years. Copy of the judgment of the criminal court has been tendered on the record as Ext.PW1/B. This petitioner was not an accused in this case. When the petitioner was not an accused in this case why his services shall be terminated by the respondent? Secondly, why the respondent shall persuade the petitioner to wait for the end result of the criminal case. There is no logic in the explanation offered by the petitioner for the delay in raising the demand. The criminal case was decided in the year 2010 and petitioner has not placed on record any material to show that he has ever represented the respondent after 2010. The petitioner is proved to have kept mum for long 17 years and the demand was raised all of sudden in the year 2015. The delay has not been explained anywhere either in the pleadings or in the evidence. The delay is gross and unexplained. The effect of this delay on the claim of the petitioner is dealt in the succeeding para's as the Reference received from the appropriate government has sought an adjudication on the effects of the delay of 17 years in raising the demand.

11. Dealing with the plea of the petitioner that he has worked in continuity for more than 240 days before his alleged termination, it may be stated that there are variations in between the pleadings and the statement of the petitioner recorded on oath. In the claim, he has vaguely pleaded that he had worked in the year 1998-1999 with the respondent and thereby completed 240 working days preceding his termination. The language of the Reference make it clear that the alleged termination of the petitioner took place in the year 1998. In the rejoinder, the petitioner again pleaded vaguely that he has worked in the year 1998-1999. While leading the evidence, the petitioner changed his stand. In his affidavit Ext.PW1/A he pleaded in para No. 1 itself that he was engaged in the year 1998 by the respondent and he worked till year 1998. In para No. 3, he has

more specifically referred the period of his engagement as year 1998 to September, 1998. Thus averments of the petitioner in the claim that he had worked in the year 1998-1999 are not even supported by the evidence led by him.

12. In the aforesaid background, in case, the statement of the petitioner is relied upon, it can be said that the petitioner has at the most worked in the year 1998 only with the respondent and his services were terminated in September 1998. Since the respondent has specifically denied the case of the petitioner and pleaded that the petitioner has not worked even for a single day as a daily wage, therefore, it was for the petitioner to lead further evidence to corroborate his self-serving testimony. The petitioner has not examined any other witness to depose about the fact that he had also witnessed the petitioner working for the respondent in the capacity of a daily wage beldar. No family member, relative or the villager has been examined by the petitioner to prove this fact. The petitioner has, therefore, not led oral evidence to corroborate his self-serving statement.

13. The petitioner, however, has led documentary evidence to lend corroboration to his case. He has placed heavy reliance upon the copy of copy of the judgment dated 25-6-2010 delivered by the court of Ld. Judicial Magistrate 1st Class, Court No.1 Sundernagar as Ext.PW1/B. It is argued that Sh. Babu Ram has lodged an FIR at the instance of the respondent and in the capacity of a workman of the respondent when theft of a Cheel tree has taken place in the jungle and theh present petitioner has been named as a workman of the respondent in the same. It is further argued that the petitioner has also appeared as a witness on behalf of the respondent in the criminal case and this fact prove that he was the workman of the respondent at that time. On the strength of this document, it is argued that the petitioner has been able to corroborate his case by documentary evidence and, therefore, he is entitled for the relief claimed.

14. It is settled law that the judgment of criminal court is relevant only for limited purpose. The only relevancy of such judgment is to ascertain whether the accused was acquitted or convicted. No other findings of the criminal court can be used in civil proceedings as civil cases are to be decided on their own facts, evidence and merits. The judgment of the criminal court is not binding upon the civil court. It was held by the Hon'ble Supreme court in **Karamchand Ganga Pershad & Anr.** vs. **Union Of India & Anr, reported in AIR 1971 SC 1244** in Para No. 4 that it is a well established principle of law that the decisions of the civil courts are binding on the criminal courts but the converse is not true. Therefore, as per the settled law, the judgment delivered in a criminal case proved on the record as Ext.PW1/B is relevant to know the end result of the trial and nothing more. All the accused were acquitted by the criminal court of the offence under section 33 of IF Act and 379, 341, 353, 332, 336, 506 IPC. The findings to this effect can be looked into in any civil case including the present claim petition.

15. It may be stated here that as per the settled law referred hereinabove, the prohibition lies in relying upon the findings/decision of the criminal court by the civil court. Finding/decision is the conclusion drawn by the court after examining the facts, law and evidence. The findings do not include the pleadings of the parties in a complaint case and the contents of the charge-sheet or the FIR or any other document filed with the charge-sheet and referred to by the criminal court in the judgment. Such pleadings and contents of the charge-sheet/FIR can be relied upon by the civil court against the party to whom the same belongs unless the same are explained away in the civil proceedings either in the pleadings or during the evidence.

16. This court, therefore, can make limited use of the contents of the judgment delivered by the criminal court copy whereof has been placed on the record as Ext. RW1/B. In para No. 8 of this judgment, it has been recorded by the learned criminal court that PW1 Babu Ram, the complainant, has stated that he was the Chowkidar in the forest department and he was deputed in forest Snain alongwith Hari Ram, Babu Ram, Nathu and Prakash. In the opening para of the

judgment, it has been mentioned that the complainant reported the matter to the police and disclosed that he belonged to village Sanehan. It has been further mentioned that in the FIR, he has reported that he, Babu Ram, Sant Ram, Sihnu Ram, and Prakash Chand are working in the forest department on daily wages for past 4-5 months. The further facts mentioned in the FIR have also been reproduced by the learned criminal court in the opening para of the judgment to the effect that on 05-09-1998 all these forest workers were deputed to visit the house of one Ram Lal and bring the stolen logs of Cheel tree. All these workers were assaulted by the accused persons and thus the FIR was lodged by the Sh. Babu Ramfind specific reference of he present petitioner as one of the worker of the respondent. It is clear from the opening para of the judgment that after lodging of the FIR, investigation took place in the matter and charge-sheet was filed against the assailants for the aforesaid offences after collecting several documents. The present petitioner has been referred to as one of the witness in the judgmentand his statement was recorded in the court as PW4 and copy of this statment has also been placed on the records of this file. The guilt of the accused was not established on merits beyond every reasonable doubts, and they were acquitted at the end of the trial.

17. Sh. Subash Chand Prashar, the Divisional Forest Officer appeared as RW1 in the witness-box and tendered his affidavit as Ext. RW1/A. He has himself made a reference of the criminal case and has also filed copy of the judgment of the criminal court. He has further stated in this affidavit that the petitioner was not an accused in that case. He has not explained the things further. When he was subjected to the cross-examination, he stated specifically that he was well conversant with the judgment delivered in the criminal case, Ext. PW1/B. He further admitted that the petitioner was produced as a witness in this criminal case. He has further admitted that the petitioner was introduced as the daily wage beldar of the respondent. These admission are sufficient to lend corroboration to the uncorroborated statement of the petitioner made by him on oath. It is thus very much proved that the petitioner has appeared as a witness in this criminal case as a daily paid beldar of the respondent department and deposed about the facts accordingly. He was beaten up with other Beldars and the accused persons were tried for causing hurt to the public servants. The RW1 Sh. Subash Chand Prashar has not explained at all as to why the petitioners name was introduced in the FIR as one of the Beldar working in the respondent department, in case, he was not the daily wage beldar of the department.

18. RW1, Sh. Subash Chand Prashar has nowhere explained as to why action was not taken against this petitioner for impersonating as daily wage beldar of respondent department while joining the investigation in the FIR lodged by Sh. Babu Ram. There is no explanation on the record to show as to why the department did not inform the police during the investigation that this Prakash Chand was not their employee. The learned criminal court has framed charges against the accused person for offence under Sections 353 and 332 IPC for causing hurt to the petitioner and others in the capacity of public servants. Such charges are framed by criminal court when there is sufficient material on the record to suggest the person assaulted was a public servant. It is recorded by the learned criminal court in the judgment Ext.PW1/B that copy of muster roll was also placed on the record of the police as Mark-E but the same was not proved. It is thus clear that name of the petitioner and others were appearing on the muster rolls handed over to the police by the respondent department during the investigation and for these reason the learned criminal court framed the charges under Sections 332 and 353 IPC against the accused on being satisfied that the petitioner and others were public servants. Once Sh. Subash Chand Prashar (RW1) has admitted that the petitioner has appeared as witness before the learned criminal court as beldar of the respondent, this admission is sufficient to corroborate the case of the petitioner. Furthermore, the facts mentioned in the charge sheet and reproduced by the learned criminal court in the opening part of the judgment are relevant to prove that petitioner was a daily paid beldar with the respondent in the year 1998 and for these reasons he appeared as the witness claiming him a daily wage beldar when an offence of assault of public servant was committed by those accused persons

agaisnt him and others. All these facts corroborate the case of the petitioner and at least it is proved that in the year 1998 he has worked as a daily wage beldar with the respondent. It was disclosed by while lodging the FIR Ext.PW20/A that they were working with forest department on daily wage basis for last 4 to 5 months. Such reference has come in the opening portion of the judgment of the learned criminal court. This FIR was lodged in the month of September, 1998. Thus the petitioner is proved to have worked for 4 to 5 months with the respondent as he claims that his services were terminated in September, 1998. Since 4 to 5 months do not make 240 days therefore, the petitioner has failed to prove that there was violation of Section 25-F of the Act at the time when his services were terminated. The petitioner has further filed on record the Seniority List Ext.PW1/C and it is clear from the perusal of the same that after the year 1998 several fresh hands were engaged by the department. Once the petitioner is proved to have worked as beldar with the respondent in the year 1998, his being out of job after the year 1998 itself amounts to his termination as the respondent has denied his engagement unsuccessfully. In such a situation, the petitioner should not have been given an opportunity to join the work. The department did not give any opportunity to the petitioner to join the work. The respondent rather disclaimed the petitioner as their employee and came up with the case that petitioner had not worked even for a single day with the department. Not only this, the respondent filed a fictitious Mandays Chart showing that petitioner has worked for zero days in the year 1998, 1999 and 2000 etc. Since fresh hand are proved to have been engaged after the year 1998 by the respondent without giving priority to the petitioner, it is held that the respondent has violated the provisions contained in Section 25-H of the Act.

19. The next question that arises for determination whether the petitioner is entitled for reinstatement or for any other alternative relief. No doubt there is violation of Section 25-H of the Act yet the conduct of the petitioner is also very discouraging. He is proved to have remained mum for around 17 years and raised the demand at very belated stage without showing a sufficient cause for such a lethargy. The plea of the petitioner that since the criminal case was pending and he was advised to raise the demand after the adjudication of the same has already been rejected and discussed hereinabove. No such excuse could have been made by the petitioner when he was not an accused in the aforesaid case. The delay on the part of the petitioner is inordinate, gross and without any reasonable and sufficient cause. In these facts and circumstances granting the relief of reinstatement shall not possible in view of the settled law of the land to the effect that when a petitioner goes in slumber for several years and does not fight for his right at earliest, he can not claim his reinstatement as a matter of right and the court should mould the relief towards compensation rather than reinstatement. The petitioner is, therefore, held entitled for the alternative relief of compensation in this case. Taking into account the, number of working days, age of the petitioner and other attending facts and circumstances a sum of ₹ 60,000/- shall be sufficient to compensate the petitioner for the wrong done to him. Issue No.1 is answered partly in favour of the petitioner.

Issue No. 2 :

20. In view of the discussions on the issue No. 1, the petitioner is held entitled for compensation of ₹60,000/- hence, issue No. 2 is also decided in favour of the petitioner.

Issue No.3 :

21. Since the claim petition has been filed in pursuance to the reference received from the appropriate Government, therefore, claim petition is maintainable, hence this issue is held decided against the respondent.

Relief :

22. In view of my discussion on the above issues, it is held that that the respondent has violated the provision contained in Section 25-H of the Act, but taking into the account the delay and laches on the part of the petitioner he is held entitled for compensation to the tune of ₹60,000/- (Rupees sixty thousand only), which would be paid within four months by the respondent and from the date of receipt of Award failing which the respondent shall be liable to pay the interest @ 6% per annum on the said amount from the date of award till the date of its realization. Parties are left to bear their costs.

23. The reference is answered in aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette. File after due completion be consigned to the Record Room.

Announced in the open Court today, this 16th day of September, 2022.

Sd/-
(HANS RAJ)
Presiding Judge,
Labour Court-cum-*Industrial*
Tribunal, Kangra at Dharamshala, H.P.

IN THE COURT OF SH. HANS RAJ, PRESIDING JUDGE, LABOUR COURT-CUM-**INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)**

Ref. No. : 550/2016

Date of Institution : 24-08-2016

Date of Decision : 21-09-2022

Shri Rajesh Kumar and other co-workers c/o Jagran Prakashan Limited, Village Banoi, P.O. Rajol, Tehsil Shahpur, Near Kangra Airport, Pathankot-Mandi Highway, District Kangra, H.P.

. .*Petitioners.*

Versus

The Employer/Management, M/s Jagran Prakashan Limited, Village Banoi, P.O. Rajol, Tehsil Shahpur, Near Kangra Airport, Pathankot-Mandi Highway, District Kangra, H.P.

. .*Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioners : Shri Umesh Nath Dhiman, Ld. Adv.

For the Respondent : Shri N.L. Kaundal, Ld. AR
: Shri Rajat Chaudhary, Ld. AR

AWARD

The following reference has been received from the appropriate Government for adjudication under Section 10 (1) of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for short).

Whether demands raised by Shri Rajesh Kumar and other co-workers c/o Jagran Prakashan Limited, Village Banoi, P.O. Rajol, Tehsil Shahpur, Near Kangra Airport Pathankot-Mandi Highway, District Kangra, H.P. *vide* demand notice dated 05-05-2015 (copy enclosed) to be fulfilled by the General Manager, M/s Jagran Prakashan Limited, Village Banoi, P.O. Rajol, Tehsil Shahpur, Near Kangra Airport, Pathankot-Mandi Highway, District Kangra, H.P., is legal and justified and maintainable? If yes, what relief the above workers are entitled to from the above mentioned Management/employer?"

2. The claim in support of the reference has been filed by as many as 19 petitioners. Their case, in nutshell, is to the effect that they were regular workers of the respondent and had been working on different posts before their illegal termination. Majithia Wage Board was constituted by Government of India under Working Journalists and Other Newspaper Employees (Condition of Service) and Miscellaneous Provisions Act, 1955 in order to regulate the conditions of service of working journalists. (The aforesaid Act hereinafter shall be referred to as Governing Act) The recommendations of the Board were accepted by Government of India on 25-10-2011 and implemented *w.e.f.* 11-11-2011. The petitioners were, therefore, eligible for the revised wages as per these recommendations. The respondent with a view to deny the petitioners of their legitimate rights, prepared a false document in the name of the petitioners and manipulated their false signatures thereupon and started claiming that they have opted to retain the old wages as per clause 20(J) of Majithia Wage Board and refused their rightful claims on such fraudulent document. On such averments the petitioners have prayed for release of salary as per Majithia Wage Board and for the relief of their reinstatement with past seniority and with all monetary benefits. Shri Rajesh Kumar has filed his affidavit in support of the claim.

3. The respondent has resisted and contested the claim on the plea that the Reference received from the appropriate Government is not maintainable as Deputy Labour Commissioner, who referred the matter, was not competent to refer the same. The respondent has further submitted that the petitioner No. 1, 3 to 12, 14 to 17 and 19 to 20 were already terminated after holding inquiry in which they were given a complete opportunity to defend themselves, whereas, the applicant No. 2 Shri Rajiv Goswami had absconded but later on raised a dispute regarding his termination. So far as the petitioners No. 13, 18 and 21 are concerned, they are alleged to have voluntarily resigned from their services. As per the respondent, their employees had exercised the option available to them under paragraph No. 20(j) of Majithia Wage Board and decided to retain their existing pay scale/existing emoluments and no paper was fabricated by the respondent in the manner as alleged. It is further submitted that the respondent is making the payment as per the Majithia Wage Board and is always complying with the Majithia Wage Board recommendations as per para No. 20 (j). The reference is said to be bad as the original complaint was never investigated and release of wages cannot be made under Section 10 (1) (c) of the Industrial Disputes Act, 1947 (hereinafter referred to as Act). It is also submitted that the issue relating to implementation of Majithia Wage Board is not covered under Section 2-K of the Act and there is a complete mechanism provided under Section 17 of the Governing Act, hence, the Reference is liable to be dismissed as remedy lies somewhere else.

4. The petitioners have filed rejoinder and reaffirmed the averments so made in the claim petition and denied those in the reply. It is stressed that the petitioner and others have never opted for the existing pay structure and false document was prepared in order to frustrate their legitimate claim.

5. On the pleadings of the parties, following issues were framed on 07-06-2018 for determination:—

1. Whether the demands raised by Rajesh Kumar and other co-workers *vide* demand notice dated 05-05-2015 is to be fulfilled by the General Manager, M/s Jagran

Prakashan Limited, Village Banoi, P.O. Rajol, Tehsil Shahpur, Near Kangra Airport, Pathankot-Mandi Highway, District Kangra, H.P. are legal and justified as alleged? . .*OPP.*

2. If issue No. 1 is proved in affirmative, to what service benefits the petitioners are entitled to? . .*OPP.*

3. Whether the claim petition is not maintainable in the present form as alleged? . .*OPR.*

4. Whether petitioners have suppressed and concealed the true and material facts from the Court as alleged? . .*OPR.*

5. Whether the demands raised *vide* letter dated 05-05-2015 of petitioners/workers submitted before the Labour Officer Kangra is Charter of demand or simple complaint as alleged. If so, its effect? . .*OPR.*

6. Whether the petitioners have voluntarily after understanding the contents of documents undated which has been signed by various employees of the respondent including claimants/petitioners dated 22-11-2011 and 23-11-2011 exercised their option under para 20(J) of Majithia Wage Board as alleged? . .*OPR.*

Relief.

6. I have heard learned counsel for the petitioners as well as learned Authorized Representative for the respondent at length and considered the material on record.

7. For the reasons recorded hereinafter, the findings of this Court on the above issues are as under:—

Issue No. 1	: Left open being connected with issue No. 6 and inseparable from the same
Issue No. 2	: No relief in this petition
Issue No. 3	: Yes
Issue No. 4	: No
Issue No. 5	: decided accordingly
Issue No. 6	: Left open to be decided in appropriate proceedings
Relief	: Petition is disposed off as not maintainable per operative portion of the Award.

REASONS FOR FINDINGS

Issues No.1,5 & 6 :

8. All these issues are taken up together for discussion and decision as they are interlinked and interconnected. The first and foremost question that arises for determination in the present Reference is whether the award for the reinstatement of the services of the petitioner and others can be passed by this court when no Reference to this effect has been received from the Appropriate Government?

9. The learned Counsel for the petitioners has argued that since the services of the petitioners have been dispensed with after the demand was raised, the question of termination was *'matter incidental to the main relief',* hence, no specific Reference was required. On the other hand, the Learned Counsel for the respondent has argued that this court can not travel beyond the Reference received to grant the relief not sought in the Reference.

10. The demand was made by the petitioners on 05-05-2015 to the Labour Officer while they were all in services and the Reference was made on 16-07-2016. The Reference received by this court is silent regarding the alleged termination of services in violation to the labour laws. This Reference also does not seek an adjudication on the point as to whether the petitioners are entitled to the relief of reinstatement or not. The petitioners have claimed this relief for the first time in the claim petition without specifying categorically in the pleadings as to when and in what manner their services were dispensed with by the respondent. No issue has been framed on this aspect.

11. It is settled law by now that the Labour court can not go beyond the scope of the Reference while granting the relief for the reason that such a court acquires jurisdiction from the Reference and it has no original jurisdiction in such matters. In **State of H.P. & Anr.** Vs. **Mahinder Singh reported in 2017 LLR 1256,** the State Government of H.P. had assailed the Award of the Labour court by way of writ petition on the plea that the Labour Court should have dismissed the claim petition on the ground of delay and latches as the workman had raised the dispute after a considerable time. Relying upon **Mukand Ltd.** v. **Mukand Staff & Officers association reported in 2004(101) FLR 219 (SC)**, it was held that the Tribunal being the creature of the Reference, can not adjudicate the matters not within the purview of the dispute actually referred to it by the order of Reference. It was further held that since the question of delay and latches was not referred to the Tribunal, therefore, the Tribunal could not have answered the Reference against the workman on the ground of delay and latches, and has thus rightly granted the relief.

12. In the case in hand, the services of some of the petitioners were dispensed with after conducting an Inquiry. Others are said to have resigned from their jobs. Such facts are pleaded in the reply to the claim petition. Such pleas, therefore, require independent adjudication and can not be said to be *'matters incidental to the main relief',*.

13. So far as section 16A of the Governing Act is concerned, it does not suggest any other independent remedy. This section only pin-points that termination of the services of the journalist in order to avoid the liability shall not take place. Such violation at the most can invite penalty under section 18 of the Governing Act. The respondent has pleaded that petitioner No. 1, 3 to 12, 14 to 17 and 19 to 20 have been terminated after holding inquiry in which they were given a complete opportunity to defend themselves, and, the applicant No. 2 Shri Rajiv Goswami earlier absconded but later on raised a dispute regarding his termination. The applicant No. 13 and 18 are said to have voluntarily resigned from their services. When such specific grounds are taken by the respondent to show the manner in which the services of the petitioners were dispensed with, it, therefore, can not be said that the question of termination of the services of the petitioner is *'matter incidental to the demand for the arrears under the Majithia Wage Board'*. Specific Reference is required to adjudicate the question of such terminations. Therefore, the relief claimed by the petitioners for their reinstatement and consequential benefits for the first time in the claim petition is certainly beyond the scope of the present Reference and can not be adjudicated. Otherwise also, it is evident from para, **IX)** of the the written arguments filed on behalf of the petitioners that References in individual cases are for reinstatement and back-wages, whereas, this collective Reference is to seek determination and declaration of the false document produced by the management. It shows that individual References for reinstatement have also been received in which the legality or otherwise of reinstatement shall be adjudicated separately. Moreover, the

petitioner have not approached the court under section 33 of the Industrial Disputes Act prior to their alleged termination with the prayer that since an industrial dispute was pending before the conciliation officer and the respondent was malafidely trying to terminate their services in the meanwhile as a pressure tactics and, therefore, an order be passed against the respondent to not to terminate the services of the petitioners in the meanwhile without the permission of the court. Thus the petitioners can not be granted the relief of reinstatement in this Reference, and since the merits of the claim of reinstatement are not touched in this Reference, therefore, this Award shall not come in their way to seek the relief of reinstatement through separate proceedings as principle of res-judicata shall not apply to the subsequent proceedings.

14. Taking the issue No. 5 firstly for discussion, it may be stated here that once a Reference has been made by the Appropriate Government to the Labour court, it becomes immaterial whether the letter dated 05-05-2015 is a complaint or the demand charter. Once the Appropriate Government has made the Reference, the court can not dismiss the same on the ground that it was made on the basis of a complaint and not on demand notice, as issuance of the demand notice is not a condition precedent to approach the Conciliation Officer. It is settled law that raising of a demand is not a condition precedent to approach the Conciliation Officer and for making of the Reference by the Appropriate Government. In **Shambhu Nath Goyal** vs. **Bank of Baroda reported in AIR 1978 SC 1088,** it was held:—

> **[5]** A bare perusal of the definition would show that where there is a dispute or difference between the parties contemplated by the definition and the dispute or difference is connected with the employment or non-employment or the terms of employment or with the conditions of labour of any person there comes into existence an industrial dispute. The Act nowhere contemplates that the dispute would come into existence in any particular, specific or prescribed manner. For coming into existence of an industrial dispute a written demand is not a sine qua non, unless of course in the case of public utility service because S. 22 forbids going on strike without giving a strike notice. …….

15. It was further observed in para no. 6 of the aforesaid ruling:—

> **[6]** Thus the term 'industrial dispute' connotes a real and substantial difference having some element of persistency and continuity till resolved and likely if not adjusted to endanger the industrial peace of the undertaking or the community. When parties are at variance and the dispute or difference is connected with the employment, or non-employment or the terms of employment or with the conditions of labour there comes into existence an industrial dispute. To read into definition the requirement of written demand for bringing into existence an industrial dispute would tantamount to re-writing the section.

16. Thus in the present case also it is not material as to whether the letter dated 05-05-2015 is a complaint or the demand. Once the Appropriate Government has come to the conclusion that there was an industrial dispute and after attaining this satisfaction, Reference was made to this court, it is not necessary to examine the nature of the letter dated 05-05-2015 as such investigation is immaterial. Relying upon the judgment of Hon'ble Supreme court of India in **Shambhu Nath Goyal** referred hereinabove, it is held that the raising of the demand by the petitioners is not a condition precedent to refer the dispute to the Labour court. The only fact material for making the Reference is the satisfaction of the Appropriate Government to the effect that either an Industrial dispute existed or was apprehended. Therefore, even if the letter dated 05-05-2015 is treated as complaint or the demand, the net result remains that the Conciliation Officer was satisfied from the material placed before him that an industrial dispute either existed or there was an apprehension that it could exist in near future on account of the existing circumstances, and therefore, the Appropriate Government made the present Reference. Thus there is no effect of the nature of the

letter dated 05-05-2015 on the present Reference and this issue does not require further discussions and is decided accordingly.

17. On issues No. 1 and 6, the learned Counsel for the respondent has argued that since the matter pertained to the release of the arrears under the Governing Act, therefore, the Reference could have been made by the State Government or the Authorized Authority under section 17 (2) of the Governing Act, and the Appropriate Government had no role and jurisdiction in the matter, hence, the present Reference was without jurisdiction and void abinitio and this court is not bound to answer the same. He has further argued that no industrial dispute has arisen in this case which would come within the purview of section 2(k) of the Industrial Dispute Act, hence the Reference was not maintainable at all.

18. The learned Counsel for the petitioner has repelled this line of argument and pointed out that once a Reference has been received by the court, the same has to be answered on merits and the court can held the same as not maintainable. He has cited the case law on this pointed discussed hereinafter.

19. Before the aforesaid contentions are examined, some admitted facts necessary for the just decision of the case are referred. It is an admitted fact that all the petitioners had been in the services of the respondent prior to the year 2011 ranging from 1998 to 2010 as is clear from their appointment letters tendered in evidence. Majithia Wage Board was constituted by the Central Government to fix or revise rates of wages for working journalist and non-journalist newspaper employees. The recommendations of the Majithia Wage Board were accepted by Government of India on 25-10-2011 and implemented *w.e.f.* 11-11-2011. The petitioners being governed by these recommendations were also governed by the same. The recommendations were not implemented by newspaper establishments. Several Writ petitions were filed to assail various provisions of the recommendations by the newspaper establishments. All the writs were clubbed together with **ABP Pvt. Ltd. & Anr** vs. **Union of India (AIR 2014 SUPREME COURT 1228)** and dismissed by the Hon'ble Supreme Court on 07.02.2014 with the following directions

> *[73] In view of our conclusion and dismissal of all the writ petitions, the wages as revised/determined shall be payable from 11-11-2011 when the Government of India notified the recommendations of the Majithia Wage Boards. All the arrears up to March, 2014 shall be paid to all eligible persons in four equal installments within a period of one year from today and continue to pay the revised wages from April, 2014 onwards.*

20. Clause 20(j) of these recommendations is very important for the purpose of this case. It reads as under:—

> ***20 (j)*** *The revised pay scales shall become applicable to all employees with effect from 1st July 2010. However, if an employee within three weeks from the date of publication of the Government Notification under section 12 of the Act enforcing these recommendations exercises his option for retaining his existing pay scale and "existing emoluments", he shall be entitled to retain his existing scale and such emoluments.*

21. The present respondent did not pay the revised scales to its employees including the present petitioners either after 11-11-2011 when the same were notified or after 07-02-2014 when the writ petitions filed to assail the recommendations were dismissed by the Hon'ble Apex Court. It appears from the language of the letter dated 05-05-2015 that the petitioners have approached the respondent after 11-11-2011 and requested that the revised wages be paid to them as per the recommendations of the Majithia wage board, but their request/ demand was not accepted and they were apprised that since they have exercised the option under clause 20(j) of the recommendations

to retain the pre-revised scale, therefore, their demand could not be fulfilled. It is for this reason that the petitioners addressed a complaint dated 05-05-2015 to the Labour Officer alleging therein that they have never opted to stay on the old scale and the document purported to be an option exercised was a fake and forged document prepared by the respondent by using their signatures on the receiving list of Diwali sweets from the management to its workers. These facts are very much clear from the bare reading of the aforesaid document Ext. R-1. This complaint was made to the Labour Officer. The Labour Officer entered in the conciliation proceedings in this complaint and the respondent took the same stand in the same as is clear from the copies proceedings proved on the record as Ext. RW4/B. The letter dated 05-05-2015 has been treated as demand notice as is clear from the letter Ext. RW4/A tendered on the record. The respondent had also filed a reply before the Labour Inspector which has been tendered as Ext. RW4/C. This reply is also clear regarding the stand of the respondent. The report under section 12 (4) of the Act has been placed on the record as Ext. RW4/D in which an issue regarding the exercise of the option under section 20 (j) was proposed to be referred to the labour court. It is however, clear from the Reference received by this court on 16-7-2016 that an entirely different issue has been raised in the present Reference.

22. From the aforesaid material it is an admitted position that the respondent is a newspaper establishment and the petitioners are journalist and non-journalist employees of the respondent and they are governed by the Governing Act. It is also an admitted fact that recommendations of the Majithia wage Board are applicable to the petitioners. It is also clear from the judgment of Hon'ble supreme Court of India delivered in **ABP Pvt. Ltd. Supra** that the recommendations of the Majithia Wage Board stands implemented *w.e.f.* 11-11-2011 and the petitioners were also entitled to receive the revised wages *w.e.f.* 11-11-2011 as they are admitted employees of the respondent. The petitioners started demanding the benefits of revised scale after the notification but the respondent admittedly did not release the same. The respondent set up a document purported to be the option allegedly exercised by the petitioners and others and signed in between 21-11-2011 to 23-11-2011. This document has been placed as mark x on the record. This fact was communicated to the petitioners as well, and for this reason the petitioner in their complaint dated 05-05-2015 made a reference of this fact. The arrears *w.e.f.* 11-11-2011 to 05-05-2015 became **amount due** for the purpose of section 17 (1) of the Governing Act as the petitioners were also entitled to avail the revised scales on the basis of the recommendations. This **amount due** was not paid by the respondent by taking the shelter of clause 20(j) of the recommendations. This very ground was taken by the respondent during the conciliation proceedings discussed hereinabove. Once the respondent has taken the defence of the clause 20(j) of the recommendations to deny the benefit of the revised scale to the petitioners, the respondent has thus automatically implemented the recommendation of the Majithia wage Board as clause 20(j) is also a part of the recommendations and the respondent could take the plea of clause 20(j) supra after accepting the recommendations.

23. As per section 17(1) of the Governing Act when an amount is due under this Act to the newspaper employee from the employer, such employee himself or any person authorized by him could make an application to the State Government, or such authority, as the State Government may specify in this behalf and such an authority on being satisfied that the amount is so due, shall issue a certificate for that amount to the Collector and the Collector shall proceed to recover the amount in the same manner as the arrears of the land revenue. Section 17(2) of this Act deals with the situation when any question arises as to the amount due under this Act to the newspaper employee from his employer, the State Government shall refer such a question to the Labour Court.

24. In the case in hand, the demand/complaint dated 05-05-2015 specifically dealt with the implementation of the recommendations and recovery of the arrears of the revised scale from the respondent. The questioned that arises for consideration is whether such a demand by the petitioner could be treated as a demand charter under Industrial Disputes Act or it could be treated as an application under section 17(1) of the Governing Act?

25. When the recommendations were implemented *w.e.f.* 11-11-2011 and when the Hon'ble Supreme court in its decision dated 07-02-2014 was pleased to order the payment of the arrears of the difference in four equal installments till March 2014 to the **eligible persons** and pay the revised wages in continuity *w.e.f.* April 2014, no such demand could have been referred again to the Labour Court for adjudication as this issue could not have been re-agitated before the Labour Court, once it had attained finality at the hand of the highest court of the land. The recommendations of the Majithia wage Board were to be implemented in full as directed by the Hon'ble Apex Court and there was no second thought to it. No such Reference could have been made as no adjudication was required on this point. Since the petitioners were admitted as the employees of the respondent, it was also an admitted fact that the recommendations were also fully applicable to them. When the recommendations have been implemented by the judgment of the Hon'ble supreme court *w.e.f.* 11-11-2011, the same have been implemented in respect of the present petitioners. The present petitioners are also Governed by these recommendations *w.e.f.* 11-11-2011.

26. It is very important to mention here that the aforesaid recommendations have been implemented in full and not in parts, and therefore, clause 20(j) has also been implemented. Once the respondent has taken the plea that the petitioners and other employees have availed the option under section 20(j) of the recommendations, and once the respondent has set up a document carrying the signatures of the petitioners in order to retain the old scale, entirely a different controversy has arisen, which had no connection with the demand charter of the petitioner. The respondent has implemented the recommendations as per the directions of the Hon'ble Supreme Court and for this reason it has relied upon Clause 20(j) of the same. Had the respondent not implemented the recommendations, there was no question of relying upon the Clause 20(j) of the same as this clause is meaningless in isolation without the support of the recommendations. It is on the strength of this clause that the respondent has not paid the arrears to the petitioners and has taken the plea that the petitioners have retained the old scales by exercising the option clause 20 (j). Whether the petitioners have actually exercised the option available under clause 20 (j) of the recommendations or a forged document has been prepared by the respondent, is an entirely different controversy having nothing to do with the Industrial Disputes Act. This question can not be answered under Industrial Disputes Act, but it has to be answered under section 17(2) of the Governing Act by the Labour Court in case, a Reference is received to this effect either from the State Government or the Authority specified for this purpose.

27. The aforesaid course has been suggested by the Hon'ble Apex Court while deciding the contempt petitions against the newspaper establishments when the arrears and revised wages were not paid by them to the employees despite of the fact that the Hon'ble Court had held that correctness of the recommendations and said that these recommendation were to be implemented in full *w.e.f.* 11-11-2011.

28. In this contempt petition titled **Avishek Raja and others** *vs.* **Sanjay Gupta (AIR 2017 SUPREME COURT 2955)** it was observed by the Hon'ble Court in para No. 23 of the judgment that since the Majithia Wage Board Award has been approved vide judgment dated 07-02-2014 in the writ petition, therefore, the Award has to be implemented in full. It was also observed by the Hon'ble Court that though the four issues including Clause 20(j) have not been specifically dealt with either in the Award or the judgment passed by the Hon'ble Court, there can be no manner of doubt that a reiteration of the scope and ambit of the Award would necessarily be called for and justified. Thus giving finality to the Award and the judgment, the Hon'ble Court suggested the measures (para no. 24 onwards) to deal with the aforesaid four specific issues so that the full compliance of the orders could be had.

29. The Hon'ble Supreme Court clarified the position with respect to points (ii) and (iii) in the judgment itself in para No. 26 and further explained that expression 'financial erosion'. It was

held that erosion indicated that it was different from mere financial difficulties and such losses apart from crippling in nature must be consistent over a period of time stipulated in the Award. It was further held that it was a question of fact and had to be dealt.

30. It is apposite to refer here that the respondents in the aforesaid contempt petition had come up with the specific plea that petitioners had exercised the option to retain the existing wages. The petitioners stand was that the alleged undertakings obtained from them under clause 20(j) were involuntary in nature and there was no question of doing so when the benefits under Majithia Wage Board were more favourable. In the aforesaid background, the Hon'ble Apex court in **Avishek Raja** supra held that this dispute of fact was liable to be settled by the Authority under section 17 of the Governing Act.

31. The Hon'ble Court in **Avishek Raja** supra in para No. 27 held specifically that all the complaints with regard to the non-implementation of the Majithia Wage Board Award or otherwise be dealt in terms of the mechanism provided under section 17 of the Act. It was further held that it would be more appropriate to resolve such complaints and grievances by resort to the enforcement and remedial machinery provided under the Act rather than filing the contempt petitions. The judgment passed by the Hon'ble Apex court **ABP Pvt. Ltd. & Anr** supra dated 07-02-2014 needs a reference here to understand the things clearly. While upholding the recommendations of the Wage Board as valid, the Hon'ble Court issued the specific directions in para 73 of the judgment to the effect that the wages as revised/determined shall be payable from 11-11-2011 when the Government of India notified the recommendations of the Majithia Board. It was further directed that all the arrears upto March 2014 shall be paid to *all eligible persons* in four equal installments within a period of one year and the revised wages be paid from April 2014 onward. These observations were further supplemented by the Hon'ble Court in **Avishek Raja** supra para 23 by holding that once the Majithia Wage Board Award has been approved by the court by its judgment dated 07-02-2014 passed in writ petition No. 246 of 2011, the Award has, therefore, to be implemented in full.

32. Now returning back to the present Reference, It may be submitted here that in case the respondent fails to prove that the petitioners have exercised the option under clause 20(j) of the recommendations, the petitioners automatically shall be entitled to get the benefit of the revised pay scales and shall be entitled for the arrears as the amount due. The respondent shall be precluded from taking the plea of clause 20(j) of the recommendations in future against those employees in whose case the court has rejected this plea.

33. The most relevant question that survives for determination is whether this court can examine the question regarding option under Clause 20 (j) of the Majithia wage Board recommendations in the present Reference made under section 10 of the Industrial Disputes Act or this question can be looked into by this court only when the same is referred to this court by the State Government or Authorized officer under section 17(1) of the Governing Act?

34. As aforesaid, the present Reference is under Industrial Disputes Act and the demand of arrears and benefit of revised wages has been forwarded to this court by appropriate Government in the shape of a Reference under Section 10 of the Industrial Disputes Act. The recommendations of Majithia Wage Board have already been implemented in full by the judgment of Hon'ble Supreme Court dated 07-02-2014 and for this reason, the respondent has raised the plea available under Section 20(j) of these recommendations. The question regarding exercise of the alleged option by the petitioners or the question of fabrication of the document carrying the alleged option by the respondent, can be looked into under Section 17(2) of the Governing Act by the Labour court and not under Industrial Disputes Act.

35. The learned counsel for the petitioners has argued that Labour Court can not refrain from adjudicating the Reference received by it as the Labour Court is bound to answer the same under Section 10 of the Industrial Disputes Act. The learned counsel has cited in **Sansar Chand** vs. **State of Himachal Pradesh** reported in 2018 LAB. I.C. (NOC) 145 (H.P.). It is a settled law that once the Labour Court/Industrial Tribunal receives a Reference from the Appropriate Government under Industrial Disputes Act, the court is bound to adjudicate the same and can not hold the same as not maintainable. But in case in hand, an entirely difference situation has arisen which can not be lost sight of. Industrial Disputes Act and Working Journalists and Other Newspaper Employees (Condition of Service) and Miscellaneous Provisions Act, 1955 are two different legislations and they operate in different area. In both these statutes, References can be made to the Labour Court. Even Industrial Disputes Act is applicable to the journalists and non-journalists employees who are also governed by the Governing Act of 1955. Thus in case, the services of the journalists or non-journalists have been terminated without following the process of law or in an illegal manner, a Reference under Section 10 of the Industrial Disputes Act can be made by the Appropriate Government under the Act. There is no bar under the Governing Act of 1955 to make such Reference by the appropriate Government. But so far as the recovery of money due is concerned, it is exclusively dealt with by Section 17 Clause 1 and 2 of the Governing Act of 1955 and Industrial Disputes Act does not come in the picture at all. This section is very much clear to the effect that Reference under the same can be made either by the State Government or by the Authority specified. State Government as per Rule 36 of The Working Journalists (Condition Of Service) And Miscellaneous Provisions Rules, 1957 and as per Form C appended thereto, means the Secretary to the Government of particular State where the dispute has arisen. Any Authority, who is specified by the State Government can also make the Reference. When an employee of the newspapers establishment has any grievances regarding amount due from the employer or he is not given the benefit of revised pay as per the recommendation, he can approach the State Government or the Authority specified under Section 17 of the Governing Act of 1955 and move an application in Form-C mentioned above. He has to calculate arrears and bring this fact to the notice to the State Government or the Authority specified. The State Government or the Authority specified shall summon for the employer and persuade him to pay the amount so calculated. In case, the matter is settled or the State Government or Authority specified is satisfied that the claimed amount is due he shall issue a Certificate for the amount to the Collector and the Collector shall recover the amount as an arrears of land revenue. In case any question arises regarding amount due, the State Government either on its own motion or on the application of the applicant shall refer the question to Labour Court and the Labour Court shall pass the Award and the State Government shall send the same to Collector for recovery of the amount as arrears of the land revenue. This procedure has been specifically given in Section 17 of the Governing Act of 1955. It is further very important to notice that a Reference under Section 17 (2) of the Governing Act can be either made by the State Government or by the Authority specified and not by any third person. Even the Appropriate Government as defined in Industrial Disputes Act is not competent to refer such matter to the Labour Court as the legislature has intentionally introduced the word 'State Government' under Section 17(1) of the Governing Act. Had State Government and Appropriate Government been one and the same person, the legislature would not have specifically introduced the word 'State Government' in section 17 of the Governing Act. The State Government thus means Secretary to the Statement Government. Any Authority specified by the State Government can also make the Reference.

36. The present Reference has been made by the Appropriate Government under Section 10 of the Industrial Disputes Act. This Reference was made on behalf of the Appropriate Government by the Dy. Labour Commissioner after the conciliation failed. Thus the present Reference has been made by an Authority, who is not authorized under the Governing Act to make the Reference.

37. Sh. R.P Rana, who was posted as Deputy Labour Commissioner has appeared as RW3 and stated on oath that after 18-10-2016 the Labour Officers were designated as Authority specified for making the Reference under the Governing Act. He has stated that the power to make the Reference prior to this date was with the Appropriate Government. The notification dated 18-10-2016 is very relevant for the purpose of this case and the same has been reproduced in the written arguments of the respondents as under;—

> *In exercise of powers conferred as sub-section(1) of section 17-of the Working Journalist and other Newspaper Employees (Conditions of service) and Miscellaneous Provisions Act, 1955 (45 of 1955). The Governor of Himachal Pradesh is pleased to specify the Labour Officer of the Department of Labour and Employment, Himachal Pradesh as authority within the respective jurisdiction for the purpose of section 17 of the Act ibid, with immediate effect.*

38. No dispute to this notification has been raised by the petitioners. No other notification has been brought to the notice of this court which was operative before 18-10-2016. Had there been any other notification, the present notification would have superseded the same and reference of this fact would have come in this notification. It is thus clear that State of Himachal Pradesh had not specified any other Authority to make the References under the Governing Act of 1955 prior to the notification dated 18-10-2016. The Labour Officers of department of Labour and Employment, Government of Himachal Pradesh were designated as Authority within their respective jurisdiction for the purpose of Section 17 of the Governing Act of 1955 on 18-10-2016. This notification is thus very much clear that only Labour Officer could make the References after 18-10-2016. Prior to this date, the References could only be made by the State Government through its Secretary. The Reference in question was made on 30th July 2016 *i.e.* much prior to the notification dated 18-10-2016. On 30th July 2016, only the State Government could make the Reference through Secretary to the Government. The present reference has been made by the Dy. Labour Commissioner who was not authorized under the Act to make the Reference, and therefore, this Reference has been made by an Authority not authorized by the statute. The law not doubt is to the effect that the Labour Court has no power to hold the Reference as not maintainable and such court has to decide the same on merits, but the basic question remains as who has made the reference? If an Authority empowered under the statute, has made the Reference to the Labour Court, such a court can not refuse to adjudicate the Reference on merits on the basis of the material placed before the same. In case the Reference is received from a third person who is not authorized under the law to make the Reference, the Labour Court certainly can not adjudicate the same. It is very important to mention here that the Reference has to be made to the Labour Court by the Authority prescribed in the statue to make such a Reference. Otherwise, every third person will approach the Labour Court and ask it adjudicate a Reference made by him. The Labour Court can answer only those Reference which are made by the authorities prescribed under the law. Any Reference received from third person/agency not authorized under the law will be a Reference void abinitio which the Labour Court is not supposed to answer by applying the principle that Labour Court can not refuse to answer a Reference received by it. In case, such a practice is permitted, the workmen and the companies shall make the References directly to the Labour Court through the HR or other common representative of the company and seek an answer to the same on the ground that the Labour Court can not refused adjudication of a Reference once the same is made to it. Such a practice would mean to override the statues. Reference means only those References which are made by the Authorities prescribed under the statute competent to make the same.

39. In the case in hand, the present Reference which should have been made under the Governing Act of 1955 by the Secretary to the Government of Himachal Pradesh, has been made by Deputy Labour Commissioner under the Industrial Disputes Act, and therefore, this court can not adjudicate the issue regarding the option covered under Clause 20 (j) of the recommendations

framed in the shape of issue No. 6 as such question can be raised only under the Governing Act of 1955, after following a requisite procedure. The Reference has, therefore, been made by an officer/ Authority who had no competence to make the same under the law, and therefore, this court can not adjudicate the same on merits and the issue certainly has to be left open to be adjudicated by the court after appropriate Reference is received from the State Government or the Authority specified under Section 17 (2) of the Governing Act of 1955. since issue No. 1 is also correlated to the issue No. 6 and can not be decided without firstly deciding issue No. 6, therefore, same can not be decided in the present Reference except for observing that once the respondent has relied the Clause 20 (j) of the Recommendations, therefore, the respondent has implemented the recommendation soon after 11-11-2011 as the alleged option mark X has been dated as 21-11-2011 to 23-11-2011.

40. Parties have led oral and documentary evidence as well on the record which is now not very relevant for the present controversy for the reasons already given hereinabove. Shri Rajesh Kumar (PW1) has tendered his affidavit Ext.PW1/A, appointment letter Ext.PW1/B, transfer letter Ext.PW1/C, report of Labour Commissioner in Contempt Petition No.411/2014 Ext.PW1/D and copy of notification as Ext.PW1/E. He was subjected to cross-examination which is not very material. Similarly Shri Rajeev Goswami has appears as PW2 and has tendered his affidavit Ext.PW2/A and his appointment letter as Ext.PW2/B. Shri Kapil Dev (PW3) has tendered his affidavit Ext.PW3/A and his appointment letter as Ext.PW3/B. Shri Sanjay Kumar Sharma (PW4) has tendered his affidavit Ext. PW4/A and appointment letter as Ext.PW4/B. Shri Yuvraj Singh Gahlot has appeared as PW5 and tendered his affidavit Ext.PW5/A and appointment letter as Ext.PW5/B. Shri Shanti Swaroop Narayan has appeared as PW6 and tendered his affidavit Ext.PW6/A and appointment letter Ext.PW6/B. He has tendered his promotion letter as Ext.PW6/C as well. Shri Mukesh Kumar has appeared as PW7 and tendered his affidavit Ext.PW7/A. He has also tendered his appointment letter Ext.PW7/B. Shri Ashish Kumar Srivastava has appeared as PW8 and tendered his affidavit Ext.PW8/A, Shri Darshan Singh has appeared as PW9 and has tendered his affidavit Ext.PW9/A and his appointment letter Ext.PW9/B. Shri Chander Narayan Shukla has appeared as PW10 and has tendered his affidavit Ext.PW10/A and appointment letter Ext.PW10/B. Shri Vimal Awasthi has appeared as PW11 and tendered his affidavit Ext/PW11/A and his appointment letter is Ext.PW11/B. Shri Raj Bali Yadav has appeared as PW12 and has tendered his affidavit Ext.PW12/A and his appointment letter Ext.PW12/B. Shri Ram Kewal Singh has appeared as PW13 and has tendered his affidavit Ext.PW13/A and his appointment letter Ext.PW13/B. Shri Rakesh Kumar has tendered his affidavit as Ext.PW14/A and appointment letter Ext.PW14/B. Shri Pawan Kumar has tendered his affidavit Ext.PW15/A and appointment letter Ext.PW15/B. Shri Amar Singh has appeared as PW16 and tendered his affidavit Ext.PW16/A and appointment letter Ext.PW16/B. Shri Sunil Kumar has appeared as PW17 and tendered his affidavit Ext.PW17/A and his appointment letter Ext.PW17/B. He has tendered his promotion letter Ext.PW17/C also. Shri Mritunjay Jha has appeared as PW18 and has tendered his affidavit Ext.PW18/A and his appointment letter Ext.PW18/B. All these petitioners have stated in the same line regarding the alleged fictitious document prepared by the respondent claiming the same as the option signed by all the petitioners and others to retain the old scale under Clause 20(j) of the recommendations. Shri Shashi Sharma has appeared as PW19 and proved the copy of complaint dated 17-10-2015 as Ext.PW19/A made to the police. Sub Inspector Shri Ram Singh (PW20) who has appeared as PW20 and has stated about investigation on this complaint. On the other hand, the respondents have examined Shri Anurag Sharma, Labour Officer, Dharamshala as RW1 and stated that *vide* complaint dated 05-5-2015 the petitioners have not raised the issue of their termination. Shri Amit Kumar Chaudhary, Labour Inspector, Dehra has appeared as RW2 and he has stated about several documents prepared during the conciliation. He has also stated that issue regarding the termination of the services of the petitioners was not raised in the reference. Shri R.P. Ranan, Deputy Labour Commissioner, Government of Himachal Pradesh has appeared as RW3 and stated that after 18-10-2016 Labour Officer was specified as authority under the Governing Act of 1955

prior to this appropriate Government was the authority. He has stated that the petitioners have moved separate complaint and demand before Labour Inspector and thereafter the reference was sent by him to the court. He has also referred to the notification dated 18-10-2016. Shri Subhash Chand Sharma has appeared as RW4 and he has tendered one letter Ext.RW4/A, copy of proceedings Ext.RW4/B and reply dated 22-6-2015 Ext.RW4/C and failure report Ext.RW4/D. Shri Randip Singh has appeared as RW5 in the witness box and filed the affidavit in support of the respondent which detailed and replica reply. He was subjected to cross-examination on his affidavit Ext.RW5/A. He was cross-examined on Clause 20(j) of the recommendations and some other facts which are no material for the present controversy in view of detailed findings given hereinabove. Shri Sunit Sharma, Ahlmad of this court has appeared as RW6 and tendered the record of Reference No.551/2016.

41. The evidence referred above is not material for the purpose of the case for the simple reason that the Reference has not been made by the State Government through its Secretary or any other Authority specified in this behalf, and therefore, this court can not adjudicate the same as the same has been made under Industrial Disputes Act and not under Working Journalists and Other Newspaper Employees (Condition of Service) and Miscellaneous Provisions Act, 1955. The issue No. 6 raised in the Reference under Industrial Disputes Act can only be raised in a Reference under section 17 of Working Journalists and Other Newspaper Employees (Condition of Service) and Miscellaneous Provisions Act, 1955. The present Reference can not be also treated as Reference under section 17 of the Working Journalists and Other Newspaper Employees (Condition of Service) and Miscellaneous Provisions Act, 1955, as the Authorities to make the References under both the statute are different and can not replace each other.

42. Thus the issues No. 1 and 6 are left open by this court so that these disputes could be adjudicated by the Labour Court when the petitioners file individual applications under Section 17 of the Governing Act to the Labour Officer who is a Authority specified after 18-10-2016 to claim the arrears to which they are entitled to on account of implementation of the Majithia Wage Board recommendations. In case a Reference is made by the Authority specified to the court in accordance with the provisions contained in Section 17(2) of the Governing Act after the disputed question as framed in issue No. 6 hereinabove is raised before the Authority specified by the respondent, only then the Labour court shall have the jurisdiction to deal the same. Issues No. 5 is decided accordingly holding that the letter dated 05-5-2015 has been treated as demand by the Labour Officer during conciliation proceeding and it is also not material whether it is a demand or complaint for the reasons already recorded hereinabove.

43. It may be stated here that the parties to this case have cited several other rulings mention whereof has come in the written arguments placed on the record. I have examined those rulings as well and those are ruling on some other aspects and not relevant for the present controversy hence, the same are not reproduced here. The petitioners have also handed over the copy of Award passed by learned Presiding Judge, Industrial Tribunal, Ludhiana on 29-7-2022 in Reference No. 454 of 2016 which has also been placed on the file and this award is neither binding on this court nor there is anything in this award which would apply to the present case.

Issue No. 3 :

44. In view of the observation made while taking up the issues No.1 and 6 for discussion, this claim petition is held as not maintainable for the relief claimed. This issue is held in favour of the respondent. The petitioners are always at liberty to move the Authority specified in the light of the provisions contained in Section 17 (1) of the Governing Act as there is no limitation in claiming their accrued rights.

Issue No .4 :

45. No evidence has been led on this issue by the respondent therefore this is held against the respondent.

Relief :

46. In view of my detailed discussions hereinabove the reference is answered as under no.

(*i*) It is held that once the respondent has taken up the plea that the petitioners have exercised their option under Clause 20(j) of Majithia Wage Board recommendations, the respondent is proved to have implemented the recommendations as once the respondent implements the recommendations only then it can take the plea of Clause 20 (j) which is integral part of the recommendations.

(*ii*) It is further held that once the respondent has implemented the recommendations, the petitioners have the remedy to approach the Labour Officer/Authority specified for the amount due *w.e.f.* 11-11-2011 till the date of their termination which is said to be a subject matter of different Reference by applying in Form-C of Rule 36 so that the Authority specified is able to act under Section 17 (1) of the Governing Act as a case may be, and the respondent is also at liberty to raise plea of Clause 20(j) of the recommendations in those proceedings as per law.

(*iii*) It is further held that since the petitioners are admitted and proved as the employees of the respondent prior to the year 2011 and since the respondent by taking the plea that the petitioners have opted to retain the old scale under Clause 20(j) to the recommendations had implemented the Award, therefore, the right of the petitioners to get arrears and switch over to the revised scale *w.e.f.* 11-11-2011 is an established right which need no further investigation and this right is subject to the plea of Clause 20(j) of the recommendations and Reference under Section 17 (1) of the Governing Act is the only remedy for which neither the liberty is required nor such right is defeated by law of limitation as the petitioners had been pursuing a wrong remedy bonafidely. Otherwise also, there is no limitation to move the specified Authority under Section 17(1) of the Governing Act.

(*iv*) The petitioners are held not entitled to the relief of reinstatement in this claim petition for the simple reason that no such Reference has been received by the court. The petitioners are always at liberty to seek the relief of reinstatement as per law, and this Award shall not come in their way for the simple reason that there are no findings on the merits of their claim in this Award.

47. The reference is, therefore, answered accordingly and the petitioners are held not entitled for the relief claimed in this Reference for the reason that issue no.1 and 6 have been left open to be raised in the appropriate proceedings. Parties are left to bear their own costs.

48. The Reference is answered in aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette. File after due completion be consigned to the Record Room.

Announced in the open Court today, this 21st day of September, 2022.

Announced:
21-09-2022

Sd/-
(HANS RAJ)
Presiding Judge,
Labour Court-cum-*Industrial*
Tribunal, Kangra at Dharamshala, H.P.

IN THE COURT OF SH. HANS RAJ, PRESIDING JUDGE, LABOUR COURT-CUM-**INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)**

Ref. No. : 63/2015

Date of Institution : 23-02-2015

Date of Decision : 21-09-2022

Shri Santosh Kumar s/o Shri Roshan Lal, r/o Village Ghagas, P.O. Binola, Tehsil Sadar, District Bilaspur, H.P. . .*Petitioner.*

Versus

The Executive Engineer, H.P.P.W.D. Division Bilaspur, District Bilaspur, H.P.
. .*Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Shri S.S. Sippy, Ld. AR

For the Respondent : Shri Abhey Gupta, Ld. ADA

AWARD

The following reference has been received from the appropriate Government for adjudication under section 10 (1) of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for short).

> "Whether termination of the services of Shri Santosh Kumar s/o Shri Roshan La, r/o Village Ghagas, P.O. Binola, Tehsil Sadar, District Bilaspur, H.P. by the Executive Engineer, H.P.P.W.D., Division Bilaspur, District Bilaspur, H.P. *w.e.f.* 01-04-1999, without complying the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer?"

2. The petitioner has averred in his statement of claim that he was engaged as daily wage conductor by the respondent *w.e.f.* 22-2-1999 against the post of daily wage cleaner *vide* muster roll No.324 and worked as such till 31-3-1999 on muster roll No. 349. His services were terminated *w.e.f.* 01-4-1999 without following the provisions of labour laws by adopting unfair labour practices. FIR No.161/1999 was lodged against him on the allegations that he had obtained the job

on the basis of forged chit and he was acquitted vide judgment dated 14-1-2014 passed by Learned Judicial Magistrate 1st Class Bilaspur, H.P. His services have not been re-engaged despite of such acquittal, whereas workmen junior to him are still in service and have been regularized. The petitioner has named S/Sh. Jaipal, Jai Ram, Shayam Lal, Satpal, Ramesh, Roshan Lal, Ram Singh, Sita Ram and Smt. Poonam Kumari etc. as his juniors or having been engaged after his termination. As per the petitioner, the respondent has violated the provisions contained in Section 25-F, 25-G and 25-H of the Act. On such averments, the petitioner has prayed for his reinstatement with all the consequential benefits on the ground that he was still unemployed and had no source of his income.

3. The respondent has resisted and contested the claim and admitted the fact that the petitioner was engaged as daily wage conductor on 22-2-1999 and he worked till 31-3-1999. As per the respondent, the petitioner has forged a letter of Private Secretary to the Finance Minister of Himachal Pradesh and another letter of Dy. Secretary to Chief Minister of Himachal Pradesh to get the job and used those documents to secure the job of the conductor. When this fact came to the notice of the department, FIR was lodged and he was tried for the same. The petitioner is said to have left the work at his own and his services were never terminated in the manner as alleged. No junior was retained and no fresh hand was engaged as cleaner/conductor. One Sh. Jaipal is said to have been engaged as a conductor in the year 1997, and he was, therefore, senior to the petitioner. On suc averments, it is pleaded that there is neither violation of Sections 25-G, 25-H and nor Section 25-F of the Act and petitioner is not entitled to any relief as he had approached after almost 15 years and his claim was defeated by delay and laches.

4. The petitioner has filed rejoinder in which he reaffirmed the averments made in the petition as denied those of the reply.

5. On the pleadings of the parties as well as the language of the Reference received from the appropriate Government, the following issues were framed for determination on 12-10-2015:—

1. Whether termination of the services of petitioner by the respondent *w.e.f.* 01-04-1999 is/was improper and unjustified as alleged? . .*OPP.*

2. If issue No. 1 is proved in affirmative, to what service benefits the petitioner is entitled to? . .*OPP.*

3. Whether the claim petition is not maintainable, as alleged? . .*OPR.*

4. Whether the claim petition is bad on account of delay and laches as alleged? . .*OPR.*

Relief.

6. I have heard learned Authorized Representative for the petitioner as well as learned Assistant District Attorney for the respondent at length and considered the material on record.

7. For the reasons to be recorded hereinafter, the findings of this Court on the above issues are as under:—

Issue No. 1 : decided accordingly

Issue No. 2 : decided accordingly

Issue No. 3 : No

Issue No. 4 : No

Relief. : Petition is **dismissed** per operative portion of the Award.

REASONS FOR FINDINGS

Issue No. 4 :

8. I take up this issue firstly for disposal for the sake of convenience. The respondent has taken up the plea that the petitioner has approached the court after a delay of 15 years and his claim was therefore, defeated by delay and laches. On the other hand, the petitioner has explained that since he was being tried by the criminal court till year 2014, therefore he could not knock the doors of the court, hence the delay on his part is capable of being explained and for the bonafide reasons. When the Reference received by this court from the appropriate Government is carefully examined it is clear that the issue of delay and laches has not been referred by the appropriate Government for disposal. When no such adjudication has been sought by the appropriate Government from this court, this court can not take up the issue of delay and laches for decision and defeat the claim of the petitioner on that particular issues. It is settled law by now that the Labour court can not go beyond the scope of the Reference while granting the relief for the reason that such a court acquires jurisdiction from the Reference and it has no original jurisdiction in such matters. In **State of H.P. & Anr.** Vs. **Mahinder Singh reported in 2017 LLR 1256,** the State Government of H.P. had assailed the Award of the Labour court by way of writ petition on the plea that the Labour Court should have dismissed the claim petition on the ground of delay and laches as the workman had raised the dispute after a considerable time. Relying upon **Mukand Ltd.** v. **Mukand Staff & Officers association reported in 2004(101) FLR 219 (SC)**, it was held that the Tribunal being the creature of the Reference, can not adjudicate the matters not within the purview of the dispute actually referred to it by the order of Reference. It was further held that since the question of delay and laches was not referred to the Tribunal, therefore, the Tribunal could not have answered the Reference against the workman on the ground of delay and laches, and has thus rightly granted the relief. Thus this issue no.4 is decided accordingly and the claim of the petitioner can not be defeated on the ground of delay and laches in the present case, in case, he is otherwise able to establish his claim.

Issues No 1 to 3 :

9. All these issues are taken up together for discussion and disposal as they are interlinked so as to avoid repetition of facts and evidence.

10. When the claim, reply and the documents particularly the affidavit of the petitioner Ext.PW1/A and muster roll Ext.RW1/B are carefully examined, it is clear that the petitioner was engaged on 22-2-1999 and he remained in service till 31-3-1999. He is proved to have worked through two muster rolls being muster rolls No. 324 and 349T the number of days he worked comes to 39 days. Even the petitioner has not disputed this fact. Even if it is presumed for a while that services of the petitioner were terminated by the respondent, even then the provisions of Section 25-F of the Act are not attracted in this case for the reason that the petitioner has not worked for minimum 240 days before his termination. Therefore, the petitioner on the face of the proved facts has failed to prove the violation of Section 25-F of the Act.

11. The further case of the petitioner is regarding of violation of Sections 25-G and 25-H of the Act by the respondent and he has named several persons in para No. 4 of the petition as juniors to him as well as freshly engaged persons after his termination. The petitioner himself has

tendered his affidavit Ext.PW1/A and same fact has been mentioned in the same. He was subjected to cross-examination wherein he pleaded ignorance to the suggestion that Jaipal was senior to him as he was engaged in the year 1997. The additional evidence Ext.PW1/X has also been led and in this affidavit as many as 12 persons having been engaged as daily wage *w.e.f.* 01-2-1999 to 24-3-1999 are named. They are said to have been regularized in the due course. The services of the petitioner were terminated as per his own case on 31-3-1999 and some of these persons are junior to him as the petitioner was engaged on 22-2-1999. The case of the respondent infact is to the effect that the petitioner was engaged against the post of daily wage cleaner. Even the petitioner himself has pleaded and proved this fact on the record. Such fact has clearly mentioned in para No. 1 of the affidavit as well. The persons who are named as juniors by the petitioner have not been engaged against the post of conductor/cleaner and they are daily waged beldar. There is no similarity between the petitioner and those persons. The petitioner was engaged as a conductor/cleaner and was working in the same capacity and the juniors named by him are daily wage beldars. It is not the case of the petitioner that he was engaged as a beldar but the work of conductor/clear was taken from him and original status was that of beldar. The conductor/cleaner is a different post, whereas, beldar is entirely different post. There can be many beldars but the conductor/clear are in accordance with the requirement in the vehicles. Thus the case of the petitioner has to be considered in the light of his pleadings. The petitioner was engaged as cleaner/conductor and therefore, it is for this court to see whether any other person has been engaged as cleaner after his engagement or termination or not. In case several persons were engaged as cleaner/conductor after the petitioner and the services of the petitioner were terminated without firstly terminating the services of the junior only then a case for violation of Section 25-G was made out. Had any person been engaged as cleaner/conductor after the services of the petitioner were terminated only then a case of the petitioner under Section 25-H could have been established. The petitioner has not led any evidence on the record to show that any person was engaged as a cleaner/conductor by the department after his termination or after his engagement. The case of the respondent is very specific to the effect that neither any person was engaged after the engagement of the petitioner as cleaner/conductor nor any person was engaged as such after his termination. It is case of the respondent that Shri Jaipal was engaged as daily wage cleaner in the year 1997 and no other person was engaged till date. There is no dispute regarding the fact that Shri Jaipal was engaged as cleaner in the year 1997. This Jaipal is senior to the petitioner and petitioner can not claim any relief on this ground. No other person is proved to have bee engaged as cleaner/conductor after the termination of the petitioner and therefore, neither violation of Section 25-G nor violation of Section 25-H is established. The petitioner can not equate himself with other beldars who were engaged after the petitioner as beldar and conductor/cleaner is not the same post and there can be many beldars, whereas, the number of conductor/cleaner decided as per the number ofvehicles. The respondent has examined Shri Vishva Nath Prasher, Executive Engineer, HPPWD Bilaspur as RW1 and filed his affidavit Ex.RW1/A. He has also stated all this facts in his affidavit. When he was subjected to cross-examination nothing was put to him show that any other person was engaged as conductor/ cleaner by the department after the petitioner. Thus the petitioner has failed to make out a case for the violation of Sections 25-G and 25-H of the Act.

12. So far as the plea of the respondent that the petitioner has himself left the work, the same is not established as no letter has been placed on the record to show that the petitioner was called to join the work but he did not join. However, there is no impact of this fact upon the case of the petitioner and violation of Section 25-F is not proved, even if it is believed that the services of the petitioner were terminated. The petitioner has led evidence regarding his acquittal in the criminal case and there is no impact of this acquittal on this case. The plea of the respondent for delay and laches has already failed for the reasons that there is no Reference to decide this point. The respondent has tendered on record two documents Ext.RW1/B and Ext.RW1/C which are the recommendations to engage the services of the petitioner as daily wage conductor. The petitioner has himself come up with the case that he was engaged as daily waged conductor, therefore, the

petitioner can not equate himself with some other beldars as he was a conductor and engaged against a e specific post. Since no other conductor/cleaner was engaged by the respondent, therefore, it is not established that the respondent has violated the provisions contained in Sections 25-G and H of the Act. Thus the petitioner has failed to prove that his services have been wrongly and illegally terminated nor violation of the provisions of Sections 25-F, 25-G and 25-H of the Act. The petitioner has thus failed to make out his case for any relief including re-engagement, back wages and other service benefits. So far as the maintainability of the petition is concerned, it is maintainable for the reason it has been filed in support of the reference received from the appropriate Government. All these issues are decided accordingly.

Relief :

13. In view of my discussion on the above issues, it is held that the petitioner has failed to prove that his services were terminated illegally and in violation to the provisions contained in 25-F, 25-G and 25-H of the Act by the respondent and as such he is not entitled to any relief as claimed by him, hence claim petition is, therefore, dismissed. Parties are left to bear their own costs.

14. The reference is answered in aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette. File after due completion be consigned to the Record Room.

Announced in the open Court today, this 21st day of September, 2022.

Sd/-
(HANS RAJ)
Presiding Judge,
Labour Court-cum-*Industrial*
Tribunal, Kangra at Dharamshala, H.P.

IN THE COURT OF SH. HANS RAJ, PRESIDING JUDGE, LABOUR COURT-CUM-**INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)**
(CAMP AT CHAMBA)

Ref. No. : 421/2009

Date of Institution : 27-10-2009

Date of Decision : 30-09-2022

Shri Sansar Chand s/o Shri Sahaj Ram, r/o Village Parmar, P.O. Kumar, Tehsil Pangi, Disrict Chamba, H.P. . .*Petitioner.*

Versus

The Executive Engineer, I&P.H. Division Killar, District Chamba, H.P.

. .*Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Shri Gaurav Sharma, Ld. Adv.

For the Respondent : Shri Anil Sharma, Ld. Dy. D.A.

AWARD

The following reference has been received from the appropriate Government for adjudication under section 10 (1) of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for short).

"Whether termination of the services of Shri Sansar Chand s/o Shri Sahaj Ram by Executive Engineer, L&P.H. Division Killar, District Chamba, H.P. *w.e.f.* Year, 2005 and retaining the junior workmen, as alleged by worker, is proper and justified ? If not, what amount of back wages, seniority, past service benefits and compensation the aggrieved workman is entitled to?"

2. The petitioner has averred in his claim petition that he was engaged in I&PH Division Killar in the year 1995 and worked till the year 2004 when his services were illegally terminated by the respondent without any reasons when his case was due for regularization. According to him, workmen junior to him namely Kasham Chand s/o Shri Suni Chand and Sucheta s/o Sh. Mahesh Chand were retained and when he approached the respondent for his reinstatement, his services were not reinstated and no reasons to retain the juniors were disclosed. On the aforesaid grounds, the petitioner has prayed for the relief of reinstatement and other consequential relief.

3. The respondent has resisted and contested the petition and taken up the ground of delay and laches. On merits, the respondent has come up with the case that petitioner has not completed more than 160 days during the calendar years 1995 to 2004 as he worked intermittently as per his own convenience, and thereafter left the job at his own. The respondent further pleaded that S/Shri Kasham Chand and Sucheta had been working regularly in continuity without any breaks, and moreover, they are senior to the petitioner. Denying the fact that juniors were retained at the cost of the petitioner, the respondent, prayed for dismissal of the claim.

4. Rejoinder was not filed and from the pleadings of the parties and the language of the reference, following issues were framed for determination on 29-12-2011:—

1. Whether the disengagement of the petitioner *w.e.f.* year, 2005 is violative of the provisions of Section 25-F and 25-G of the Industrial Disputes Act, as alleged. If so, to what relief the petitioner is entitled to? . .*OPP.*

2. Whether the claim petition is not maintainable, as alleged. If so, to what effect? . .*OPR.*

3. Whether the reference suffers from vice of delay and laches, as alleged. If so, to what effect? . .*OPR.*

Relief.

5. I have heard learned counsel for the petitioner as well as learned Deputy District Attorney for the respondent at length and considered the material on record.

6. For the reasons recorded hereinafter, the findings of this Court on the above issues are as under:—

Issue No. 1 : Partly yes, as the violation of Section 25-G is proved

Issue No. 2 : No

Issue No. 3 : No

Relief. : Petition is partly allowed per operative portion of the Award.

REASONS FOR FINDINGS

Issues No.1 to 3 :

7. All these issues are taken up together for discussion and disposal as they are interlinked so as to avoid repetition of facts and evidence.

8. Before entering into the merits of the case it may be stated here that the claim petition was dismissed by this court *vide* Award dated 02-06-2012 holding that the Reference mentioned the date of retrenchment as 2005, whereas, the evidence led on the record suggested that petitioner has worked till September, 2004. It was further held that in view of this evidence it can not be said that the services of the petitioner were wrongly and illegally retrenched in the year 2005 as mentioned in the Reference, and therefore the Reference/claim petition was not maintainable for the reason that services of the petitioner were never retrenched in the year 2005 as claimed. The claim was dismissed on this technical ground and the Reference was answered in negative.

9. The petitioner felt aggrieved and dissatisfied by the Award and filed Writ Petition before the Hon'ble High Court of Himachal Pradesh numbered as 7117/2012. The writ petition was allowed by the Hon'ble court holding that once a Reference was received by the Labour Court for adjudication, the same could not be dismissed on the ground of maintainability, but being a Reference it had to be answered either in affirmative or in negative. It was further held by the Hon'ble Court that whether it was year 2004 or 2005 when the services of the petitioner were illegally terminated the net result was that he was retrenched. It was also held by the Hon'ble Court that the date or year of retrenchment was thus not material and the petition could not have been dismissed on such a hyper technical grounds by the Labour court. At the end, while allowing the writ petition the Hon'ble Court set aside the Award and remanded the file back to this court with the directions to answer the Reference in accordance with law after taking into consideration the respective submissions and evidence placed on the record by the parties.

10. The file was listed for arguments before this court but none appeared on behalf of the petitioner on the day fixed, and therefore the Reference was disposed of for non prosecution by the then Presiding Judge. Thereafter the petitioner filed an application for restoring the reference to its old number and this application was also dismissed for non prosecution and thereafter another application was filed to restore the same. The application for restoring the claim petition was allowed by this court *vide* order dated 8th January 2020 and the main file was restored on 23rd June, 2022 and it is in this manner that the main file is being disposed of in light of the directions by the Hon'ble High Court after hearing the arguments.

11. When the pleadings of the parties are carefully scrutinized, it is an admitted fact that the petitioner was initially engaged as daily wage beldar in August, 1995 and he worked as such till September 19, 2004. This fact is established by the Mandays Chart proved on the record as RW1/A by RW1 Sh. Madan Kumar Minhas, the Executive Engineer. The factual dispute arising in this case is with regard to the manner in which the petitioner discontinued the work, *i.e.* whether he was terminated or he abandoned the job?

12. Law is well settled on abandonment of job by a workman. In **Express Newspaper (P) Ltd.** vs. **Michael Mark reported in AIR 1963 SC 1141**, the question of abandonment of

employment was examined by the Hon'ble Supreme Court. This law was followed in **G.T. Lad** vs. **Chemical and Fibers India Limited (Full Bench) reported in AIR 1978 SC 582**. It was held by the Hon'ble Supreme Court that in order to hold that a person has himself abandoned his job, the intention has to be inferred from the acts and conducts of the parties and it was a question of fact. This judgment of Hon'ble Supreme Court has been followed consistently till date. The Hon'ble High Court of H.P. has also followed the aforesaid judgments of in several its judgments. In **Narain Singh** vs. **State of Himachal Pradesh and Ors., Civil Writ Petition No.3634 of 2009** decided on **21 June, 2016** it was held by the Hon'ble High Court that voluntarily abandonment of work by workman is required to be established by way of cogent and reliable evidence by the employer. The Hon'ble High Court of H.P. In another judgment titled **State of H.P. and Anr.** vs. **Partap Singh reported in 2016 Vol.6 ILR (1314)** again dealt with the plea of abandonment of job and went to the extent of saying that even if a workman has left job at his own even then the employer was not discharged from his onus. It was the duty of the employer in such a situation to issue notice upon the workman asking him to resume the duties, and in case, he still does not report to his duties, some disciplinary inquiry should be conducted against him, as such a conduct amounts to gross negligence. It was held that evidence to this effect has to be led by the employer. In all aforementioned cases, it was repeatedly held by the Hon'ble Courts that, in case, the employer does not lead any such evidence, the plea of abandonment was not established. In the case in hand, the respondent has also not led any evidence which could be termed as cogent, convincing and reliable to prove the plea of abandonment. Shri Madan Kumar Minhas, Executive Engineer (RW1) in his examination-in-chief has merely said that the workman has left his job at his own. He has not proved any notice issued to this workman, after he had started absenting from his duties, asking him to resume his work. Shri Madan Kumar Minhas has also not produced any material on the record to suggest that since the petitioner did not join the duties even after service of notice, therefore, an inquiry was conducted and a satisfaction to the effect that the petitioner had no intentions to report and resume his duties was obtained. When such is the situation the plea of abandonment as raised by the respondent has not been established.

13. Once the plea of abandonment has taken up by the respondent has failed, the plea of petitioner that his services were terminated as to be accepted as the abandonment and termination can not go side by side. Either there is abandonment or there is termination in case termination is proved abandonment fails and in case abandonment fails termination is automatically proved. There is no third root available. The petitioner has alleged that his services were terminated without complying with the provisions contained in Section 25-F. To prove this plea the petitioner has not placed on record any document. Rather the respondent has placed on record the mandays chart copy whereof has been proved as Ext.RW1/A. This mandays chart is an important document to ascertain as to whether the petitioner has worked for minimum 160 days in the preceding 12 calendar months as the petitioner was engaged in Killar Division, District Chamba which has been recognized as snow bound area where the requirement of working days is 160 in place of 240. As per this mandays chart the petitioner has worked for year 2004 for 99 days and in the year 2003 for 45 days the total number of days 99 and 45 thus total number of working days comes to 144 which is less than 160 even if the working days of both the years 2003 and 2004 are calculated. In case 12 calendar months are counted in the reverse order from September, 2004 then it comes to October, 2003 and thus only eight days are of 2003 are added in 99 working days of 2004 which comes to 107 days thus the petitioner has failed to prove that he has worked for a period of minimum 160 days in the preceding 12 calendar months and he therefore can not alleged violation of Section 25-F of the Act and such violation is also not established. It may be stated here that there is no reference with regard to time to time termination of the petitioner and therefore the court has to count actual working days clear from the mandays chart. The case of the petitioner to the effect that there was a violation of Section 25-F is not established at all.

14. The further case of the petitioner is to the effect that there was violation of Section 25-G of the Act as workmen junior to him namely S/Shri Kasham Chand and Sucheta Ram were

retained in service and their services were terminated. The petitioner again has tendered no document to prove this fact and the evidence has been led by the respondent in the shape of mandays chart of these to workmen as Ext.RW1/B. As per this the services of Shri Kasham Chand has been engaged in the year 1996 and he worked till the year 2004. It appears that his services were also terminated in the year 2004 and no working days have been shown thereafter. So far as Shri Sucheta Ram is concerned, he was engaged in the year 1998 and he has worked till the year 2010 in continuity. This person namely Sucheta Ram is junior to the petitioner as the petitioner was engaged in the year 1995 and this Sucheta Ram was engaged in the year 1998. This Sucheta Ram had worked till the year 2010 without any break and therefore it is proved that a workman junior to the petitioner was not retrenched and the services of senior workman were retrenched in the year 2004. For the sake of repetition once the respondent has failed to prove the plea of abandonment then the case of the petitioner has to be accepted to the effect that his services were terminated in the year 2004. Thus there is clear cut violation of Section 25-G of the Act in this case.

15. The learned Deputy District Attorney has argued that reference suffers from the vice of delay and laches and therefore the petitioner is not entitled to the relief of reinstatement as the dispute has been raised by him after a long period. On the other hand, learned counsel for the petitioner has argued that since there is no reference to examine the delay the aspect of the case therefore this question can not gone into and findings adverse and against the interest of the petitioner could not be recorded. It is settled law by now that the Labour court can not go beyond the scope of the Reference while granting the relief for the reason that such a court acquires jurisdiction from the Reference and it has no original jurisdiction in such matters. In case title **State of H.P. & Anr.** Vs. **Mahinder Singh,** while relying upon the judgment of the Hon'ble High Court of Himachal Pradesh cited hereinabove the plea of delay and laches can not be entertained when there being a specific reference from the appropriate Government. As aforesaid the reference is silent regarding the delay and laches and its impact on the relief of the petitioner. In the judgment cited hereinabove in **State of H.P & Anr.** Vs. **Mahinder Singh reported in 2017 LLR 1256,** the State Government of H.P had assailed the Award of the Labour court by way of writ petition on the plea that the Labour Court should have dismissed the claim petition on the ground of delay and laches as the workman had raised the dispute after a considerable time. Relying upon **Mukand Ltd.** v. **Mukand Staff & Officers association reported in 2004(101) FLR 219 (SC)**, it was held that the Tribunal being the creature of the Reference, can not adjudicate the matters not within the purview of the dispute actually referred to it by the order of Reference. It was further held that since the question of delay and laches was not referred to the Tribunal, therefore, the Tribunal could not have answered the Reference against the workman on the ground of delay and laches, and has thus rightly granted the relief. Thus this issue No. 4 is decided accordingly and the claim of the petitioner can not be defeated on the ground of delay and laches in the present case, in case, he is otherwise able to establish his claim.

16. In the case in hand also since the reference of delay and laches has not been received by this court, therefore the court can not examine the delay and laches its impact upon the case of the petitioner. The case of the petitioner can not be dismissed or the relief can not be molded for the simple reason that there was no reference regarding delay and laches and its impact upon the petitioner. Even otherwise there is no reasonable delay in the present case which could be taken to defeat the rights of the petitioner. The petitioner was retrenched in the month of September 2004 and the reference was received in the year 2009. Prior to this the conciliation proceedings had taken place and as per the Labour Officer-cum-Conciliation Officer had handed over the matter after conciliation proceedings *vide* report No. 695 dated 30-5-2008 thus the proceedings were pending before the Labour Officer-*cum*-Conciliation Officer prior 30-5-2008 as he must have conducted an inquiry in the matter and when the conciliation could not take place he submitted the matter to the appropriate Government *vide* letter dated 30th May, 2008. Although, the demand notice has not been filed and proved on the record but it can safely be said that demand was raised much earlier to

30-5-2008 probably in the year 2007 thus the delay hardly comes of three years and such delay is not inordinate and is nor sufficient to defeat the right of the petitioner that had accrued to him by the conduct of the respondent in terminating his services and retaining the services of the junior workmen.

17. Thus from the aforesaid material it is established that the services of the petitioner were terminated in September 2004 in violation to the provisions contained in Section 25-G of the Act as the services of Shri Sucheta Ram were continued this valuable right of the petitioner was defeated and the petitioner is entitled for reinstatement and seniority. So far as back wages are concerned, the petitioner is out of work since the year 2004 and now it is 2022 no evidence has been led by the petitioner to prove that he could not get any work after his services were terminated. The respondent on the other hand has come up with specific case that the petitioner was gainfully employed after he left the work. Had the petitioner been gainfully employed, he would have examined any person on the record to prove the fact that his day to day expenses were borne by some other third person and the petitioner was in a work and he is enable body person and it could not be said that he was without work so many years. Taking into account all these facts and circumstances the petitioner is held not entitled for back wages although he is held entitled for reinstatement and seniority and other consequential benefits and except back wages and as such the reference is not suffering the vice of delay and laches for the reason already recorded hereinabove and petition is also maintainable. All these issues are held decided accordingly.

Relief :

18. In view of my above discussions, the claim petition succeeds in part and is partly allowed. The respondent is directed to reinstate the services of the petitioner forthwith. The petitioner is entitled for seniority and continuity in service from the date of his illegal termination except back wages. Parties are left to bear their costs.

19. The reference is answered in aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette. File after due completion be consigned to the Record Room.

Announced in the open Court today, this 30th day of September, 2022.

Sd/-
(HANS RAJ)
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Kangra at Dharamshala, H.P.

ब अदालत जनाब उप–मण्डल दण्डाधिकारी, सदर, जिला बिलासपुर (हि0प्र0)

तारीख पेशी : 01–12–2022

ब मुकद्दमा श्री कृष्ण देव पुत्र श्री लोभी राम, निवासी गांव व डा0 सलनू, तहसील सदर, जिला बिलासपुर (हि0प्र0) ..... प्रार्थी।

बनाम

आम जनता

विषय.–प्रार्थना–पत्र जन्म एवं मृत्यु रजिस्ट्रीकरण अधिनियम, 1969 के अन्तर्गत जन्म तिथि दर्ज करने बारा।

नोटिस बनाम आम जनता।

उपरोक्त मुकद्दमा उनवान वाला में प्रार्थी श्री कृष्ण देव पुत्र श्री लोभी राम, निवासी गांव व डा0 सलनू, तहसील सदर, जिला बिलासपुर (हि0प्र0) ने इस अदालत में प्रार्थना–पत्र दिया है कि उसकी जन्म तिथि संबन्धित ग्राम पंचायत के रिकार्ड में दर्ज नहीं है उसकी जन्म तिथि 15–11–1978 है। इसे दर्ज करने के आदेश किये जायें।

अतः आम जनता को इस नोटिस द्वारा सूचित किया जाता है कि यदि किसी व्यक्ति को उपरोक्त प्रार्थी श्री कृष्ण देव पुत्र श्री लोभी राम, निवासी गांव व डा0 सलनू, तहसील सदर, जिला बिलासपुर (हि0प्र0) की जन्म तिथि ग्राम पंचायत निचली भटेड़, विकास खण्ड सदर, जिला बिलासपुर के रिकार्ड में दर्ज करने के बारा में कोई एतराज हो वह दिनांक 01–12–2022 को सुबह 11.30 बजे असालतन या वकालतन इस कार्यालय में उपस्थित होवें। अन्यथा श्री कृष्ण देव पुत्र श्री लोभी राम, निवासी गांव व डा0 सलनू, तहसील सदर, जिला बिलासपुर (हि0प्र0) की जन्म तिथि सम्बन्धित ग्राम पंचायत निचली भटेड़, विकास खण्ड सदर, जिला बिलासपुर के रिकार्ड में दर्ज करने के आदेश जारी कर दिये जायेंगे।

आज दिनांक 01–11–2022 को मेरे हस्ताक्षर व मोहर अदालत से जारी हुआ।

मोहर।

हस्ताक्षरित / –
उप–मण्डल दण्डाधिकारी,
सदर, जिला बिलासपुर (हि0 प्र0)।

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ब अदालत जनाब उप–मण्डल दण्डाधिकारी, सदर, जिला बिलासपुर (हि0प्र0)

तारीख पेशी : 01–12–2022

ब मुकद्दमा श्रीमती पिंकी देवी पत्नी श्री अमित कुमार, निवासी गांव खतेड़, डा0 बरमाणा, तहसील सदर, जिला बिलासपुर (हि0प्र0) .. प्रार्थी।

बनाम

आम जनता

विषय.–प्रार्थना–पत्र जन्म एवं मृत्यु रजिस्ट्रीकरण अधिनियम, 1969 के अन्तर्गत जन्म तिथि दर्ज करने बारा।

नोटिस बनाम आम जनता।

उपरोक्त मुकद्दमा उनवान वाला में प्रार्थिया श्रीमती पिंकी देवी पत्नी श्री अमित कुमार, निवासी गांव खतेड़, डा0 बरमाणा, तहसील सदर, जिला बिलासपुर (हि0 प्र0) ने इस अदालत में प्रार्थना–पत्र दिया है कि उसके पुत्र की जन्म तिथि संबन्धित ग्राम पंचायत के रिकार्ड में दर्ज नहीं है उसकी जन्म तिथि 10–12–2011 है। इसे दर्ज करने के आदेश किये जायें।

अतः आम जनता को इस नोटिस द्वारा सूचित किया जाता है कि यदि किसी व्यक्ति को उपरोक्त प्रार्थिया के पुत्र साहिल पुत्र श्री अमित कुमार, निवासी गांव खतेड़, डा0 बरमाणा, तहसील सदर, जिला

बिलासपुर (हि0प्र0) की जन्म तिथि ग्राम पंचायत बरमाणा, विकास खण्ड सदर, जिला बिलासपुर के रिकार्ड में दर्ज करने के बारा में कोई एतराज हो वह दिनांक 01–12–2022 को सुबह 11.30 बजे असालतन या वकालतन इस कार्यालय में उपस्थित होवें। अन्यथा साहिल पुत्र श्री अमित कुमार, निवासी गांव खतेड़, डा0 बरमाणा, तहसील सदर, जिला बिलासपुर (हि0प्र0) की जन्म तिथि सम्बन्धित ग्राम पंचायत बरमाणा, विकास खण्ड सदर, जिला बिलासपुर के रिकार्ड में दर्ज करने के आदेश जारी कर दिये जायेंगे।

आज दिनांक 01–11–2022 को मेरे हस्ताक्षर व मोहर अदालत से जारी हुआ।

मोहर। हस्ताक्षरित / –
उप–मण्डल दण्डाधिकारी,
सदर, जिला बिलासपुर (हि0 प्र0)।

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ब अदालत जनाब उप–मण्डल दण्डाधिकारी, सदर, जिला बिलासपुर (हि0प्र0)

तारीख पेशी : 01–12–2022

ब मुकद्दमा श्री लक्ष्मण चन्देल पुत्र श्री नारायण दास, निवासी गांव मण्डी माणवां, डा0 कोठीपूरा, तहसील सदर, जिला बिलासपुर (हि0प्र0) ..... प्रार्थी।

बनाम

आम जनता

विषय.–प्रार्थना–पत्र जन्म एवं मृत्यु रजिस्ट्रीकरण अधिनियम, 1969 के अन्तर्गत जन्म तिथि दर्ज करने बारा।

नोटिस बनाम आम जनता।

उपरोक्त मुकद्दमा उनवान वाला में प्रार्थी श्री लक्ष्मण चन्देल पुत्र श्री नारायण दास, निवासी गांव मण्डी माणवां, डा0 कोठीपूरा, तहसील सदर, जिला बिलासपुर (हि0प्र0) ने इस अदालत में प्रार्थना–पत्र दिया है कि उसके पुत्र की जन्म तिथि संबन्धित ग्राम पंचायत के रिकार्ड में दर्ज नहीं है उसकी जन्म तिथि 11–11–1984 है। इसे दर्ज करने के आदेश किये जायें।

अतः आम जनता को इस नोटिस द्वारा सूचित किया जाता है कि यदि किसी व्यक्ति को उपरोक्त प्रार्थी के पुत्र श्री अनील कुमार पुत्र श्री लक्ष्मण चन्देल, निवासी गांव मण्डी माणवां, डा0 कोठीपूरा, तहसील सदर, जिला बिलासपुर (हि0प्र0) की जन्म तिथि ग्राम पंचायत रघुनाथपुरा, विकास खण्ड सदर, जिला बिलासपुर के रिकार्ड में दर्ज करने के बारा में कोई एतराज हो वह दिनांक 01–12–2022 को सुबह 11.30 बजे असालतन या वकालतन इस कार्यालय में उपस्थित होवें। अन्यथा श्री अनील कुमार पुत्र श्री लक्ष्मण, निवासी गांव मण्डी माणवां, डा0 कोठीपूरा, तहसील सदर, जिला बिलासपुर (हि0प्र0) की जन्म तिथि सम्बन्धित ग्राम पंचायत रघुनाथपुरा, विकास खण्ड सदर, जिला बिलासपुर (हि0प्र0) के रिकार्ड में दर्ज करने के आदेश जारी कर दिये जायेंगे।

आज दिनांक 02–11–2022 को मेरे हस्ताक्षर व मोहर अदालत से जारी हुआ।

मोहर। हस्ताक्षरित / –
उप–मण्डल दण्डाधिकारी,
सदर, जिला बिलासपुर (हि0 प्र0)।

ब अदालत जनाब उप–मण्डल दण्डाधिकारी, सदर, जिला बिलासपुर (हि0प्र0)

तारीख पेशी : 01–12–2022

ब मुकद्दमा श्री लक्ष्मण चन्देल पुत्र श्री नारायण दास, निवासी गांव मण्डी माणवां, डा0 कोठीपूरा, तहसील सदर, जिला बिलासपुर (हि0प्र0) .. प्रार्थी।

बनाम

आम जनता

विषय.–प्रार्थना–पत्र जन्म एवं मृत्यु रजिस्ट्रीकरण अधिनियम, 1969 के अन्तर्गत जन्म तिथि दर्ज करने बारा।

नोटिस बनाम आम जनता।

उपरोक्त मुकद्दमा उनवान वाला में प्रार्थी श्री लक्ष्मण चन्देल पुत्र श्री नारायण दास, निवासी गांव मण्डी माणवां, डा0 कोठीपूरा, तहसील सदर, जिला बिलासपुर (हि0प्र0) ने इस अदालत में प्रार्थना–पत्र दिया है कि उसके पुत्र की जन्म तिथि संबन्धित ग्राम पंचायत के रिकार्ड में दर्ज नहीं है उसकी जन्म तिथि 16–06–1979 है। इसे दर्ज करने के आदेश किये जायें।

अतः आम जनता को इस नोटिस द्वारा सूचित किया जाता है कि यदि किसी व्यक्ति को उपरोक्त प्रार्थी के पुत्र श्री सुनील कुमार पुत्र श्री लक्ष्मण चन्देल, निवासी गांव मण्डी माणवां, डा0 कोठीपूरा, तहसील सदर, जिला बिलासपुर (हि0प्र0) की जन्म तिथि ग्राम पंचायत रघुनाथपुरा, विकास खण्ड सदर, जिला बिलासपुर के रिकार्ड में दर्ज करने के बारा में कोई एतराज हो वह दिनांक 01–12–2022 को सुबह 11.30 बजे असालतन या वकालतन इस कार्यालय में उपस्थित होवें। अन्यथा श्री सुनील कुमार पुत्र श्री लक्ष्मण चन्देल, निवासी गांव मण्डी माणवां, डा0 कोठीपूरा, तहसील सदर, जिला बिलासपुर (हि0प्र0)की जन्म तिथि सम्बन्धित ग्राम पंचायत रघुनाथपुरा, विकास खण्ड सदर, जिला बिलासपुर (हि0प्र0) के रिकार्ड में दर्ज करने के आदेश जारी कर दिये जायेंगे।

आज दिनांक 02–11–2022 को मेरे हस्ताक्षर व मोहर अदालत से जारी हुआ।

मोहर। हस्ताक्षरित / –
उप–मण्डल दण्डाधिकारी,
सदर, जिला बिलासपुर (हि0 प्र0)।

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ब अदालत जनाब उप–मण्डल दण्डाधिकारी, सदर, जिला बिलासपुर (हि0प्र0)

तारीख पेशी : 01–12–2022

ब मुकद्दमा श्री लक्ष्मण चन्देल पुत्र श्री नारायण दास, निवासी गांव मण्डी माणवां, डा0 कोठीपूरा, तहसील सदर, जिला बिलासपुर (हि0प्र0) .. प्रार्थी।

बनाम

आम जनता

विषय.–प्रार्थना–पत्र जन्म एवं मृत्यु रजिस्ट्रीकरण अधिनियम, 1969 के अन्तर्गत जन्म तिथि दर्ज करने बारा।

नोटिस बनाम आम जनता।

उपरोक्त मुकद्दमा उनवान वाला में प्रार्थी श्री लक्ष्मण चन्देल पुत्र श्री नारायण दास, निवासी गांव मण्डी माणवां, डा0 कोठीपूरा, तहसील सदर, जिला बिलासपुर (हि0प्र0) ने इस अदालत में प्रार्थना–पत्र दिया है कि उसकी पुत्री की जन्म तिथि संबन्धित ग्राम पंचायत के रिकार्ड में दर्ज नहीं है उसकी जन्म तिथि 03–11–1977 है। इसे दर्ज करने के आदेश किये जायें।

अतः आम जनता को इस नोटिस द्वारा सूचित किया जाता है कि यदि किसी व्यक्ति को उपरोक्त प्रार्थी की पुत्री कंचन बाला चन्देल पुत्री श्री लक्ष्मण चन्देल, निवासी गांव मण्डी माणवां, डा0 कोठीपूरा, तहसील सदर, जिला बिलासपुर (हि0प्र0) की जन्म तिथि ग्राम पंचायत रघुनाथपुरा, विकास खण्ड सदर, जिला बिलासपुर के रिकार्ड में दर्ज करने के बारा में कोई एतराज हो वह दिनांक 01–12–2022 को सुबह 11.30 बजे असालतन या वकालतन इस कार्यालय में उपस्थित होवें। अन्यथा कंचन बाला चन्देल पुत्री श्री लक्ष्मण चन्देल, निवासी गांव मण्डी माणवां, डा0 कोठीपूरा, तहसील सदर, जिला बिलासपुर (हि0प्र0) की जन्म तिथि सम्बन्धित ग्राम पंचायत रघुनाथपुरा, विकास खण्ड सदर, जिला बिलासपुर (हि0प्र0) के रिकार्ड में दर्ज करने के आदेश जारी कर दिये जायेंगे।

आज दिनांक 02–11–2022 को मेरे हस्ताक्षर व मोहर अदालत से जारी हुआ।

मोहर। हस्ताक्षरित / –
उप–मण्डल दण्डाधिकारी,
सदर, जिला बिलासपुर (हि0 प्र0)।

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ब अदालत जनाब उप–मण्डल दण्डाधिकारी, सदर, जिला बिलासपुर (हि0प्र0)

तारीख पेशी : 01–12–2022

ब मुकद्दमा श्री कर्म चन्द पुत्र श्री उमा दत, निवासी गांव थाच, डा0 सोलधा, तहसील सदर, जिला बिलासपुर (हि0प्र0) प्रार्थी।

बनाम

आम जनता

विषय.–प्रार्थना–पत्र जन्म एवं मृत्यु रजिस्ट्रीकरण अधिनियम, 1969 के अन्तर्गत जन्म तिथि दर्ज करने बारा।

नोटिस बनाम आम जनता।

उपरोक्त मुकद्दमा उनवान वाला में प्रार्थी श्री कर्म चन्द पुत्र श्री उमा दत, निवासी गांव थाच, डा0 सोलधा, तहसील सदर, जिला बिलासपुर (हि0प्र0) ने इस अदालत में प्रार्थना–पत्र दिया है कि उसकी पुत्री की जन्म तिथि संबन्धित ग्राम पंचायत के रिकार्ड में दर्ज नहीं है उसकी जन्म तिथि 05–03–2021 है। इसे दर्ज करने के आदेश किये जायें।

अतः आम जनता को इस नोटिस द्वारा सूचित किया जाता है कि यदि किसी व्यक्ति को उपरोक्त प्रार्थी की पुत्री नायरा पुत्री श्री कर्म चन्द, निवासी गांव थाच, डा0 सोलधा, तहसील सदर, जिला बिलासपुर (हि0प्र0)की जन्म तिथि ग्राम पंचायत मलोखर, विकास खण्ड सदर, जिला बिलासपुर के रिकार्ड में दर्ज करने के बारा में कोई एतराज हो वह दिनांक 01–12–2022 को सुबह 11.30 बजे असालतन या वकालतन इस कार्यालय में उपस्थित होवें। अन्यथा नायरा पुत्री श्री कर्म चन्द, निवासी गांव थाच, डा0 सोलधा, तहसील सदर,

जिला बिलासपुर (हि0प्र0) की जन्म तिथि सम्बन्धित ग्राम पंचायत मलोखर, विकास खण्ड सदर, जिला बिलासपुर (हि0प्र0) के रिकार्ड में दर्ज करने के आदेश जारी कर दिये जायेंगे।

आज दिनांक 01–11–2022 को मेरे हस्ताक्षर व मोहर अदालत से जारी हुआ।

मोहर। हस्ताक्षरित / –
उप–मण्डल दण्डाधिकारी,
सदर, जिला बिलासपुर (हि0 प्र0)।

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ब अदालत जनाब उप–मण्डल दण्डाधिकारी, सदर, जिला बिलासपुर (हि0प्र0)

तारीख पेशी : 01–12–2022

ब मुकद्दमा श्री रुप लाल पुत्र श्री अच्छर सिंह, निवासी गांव लघट, डा0 बरमाणा, तहसील सदर, जिला बिलासपुर (हि0प्र0) प्रार्थी।

बनाम

आम जनता

विषय.–प्रार्थना–पत्र जन्म एवं मृत्यु रजिस्ट्रीकरण अधिनियम, 1969 के अन्तर्गत जन्म तिथि दर्ज करने बारा।

नोटिस बनाम आम जनता।

उपरोक्त मुकद्दमा उनवान वाला में प्रार्थी श्री रुप लाल पुत्र श्री अच्छर सिंह, निवासी गांव लघट, डा0 बरमाणा, तहसील सदर, जिला बिलासपुर (हि0प्र0) ने इस अदालत में प्रार्थना–पत्र दिया है कि उसकी माता स्व0 श्रीमती उमा देवी पत्नी श्री अच्छर सिंह, निवासी गांव लघट, डा0 बरमाणा, तहसील सदर, जिला बिलासपुर (हि0प्र0) की मृत्यु तिथि संबन्धित ग्राम पंचायत बरमाणा के रिकार्ड में दर्ज नहीं है उसकी मृत्यु तिथि 07–09–2002 है। इसे दर्ज करने के आदेश किये जायें।

अतः आम जनता को इस नोटिस द्वारा सूचित किया जाता है कि यदि किसी व्यक्ति को उपरोक्त प्रार्थी की माता स्व0 श्रीमती उमा देवी पत्नी श्री अच्छर सिंह, निवासी गांव लघट, डा0 बरमाणा, तहसील सदर, जिला बिलासपुर (हि0प्र0) की जन्म तिथि ग्राम पंचायत बरमाणा, विकास खण्ड सदर, जिला बिलासपुर के रिकार्ड में दर्ज करने के बारा में कोई एतराज हो वह दिनांक 01–12–2022 को सुबह 11.30 बजे असालतन या वकालतन इस कार्यालय में उपस्थित होवें। अन्यथा स्व0 श्रीमती उमा देवी पत्नी श्री अच्छर सिंह, निवासी गांव लघट, डा0 बरमाणा, तहसील सदर, जिला बिलासपुर (हि0प्र0) की मृत्यु तिथि सम्बन्धित ग्राम पंचायत बरमाणा, विकास खण्ड सदर, जिला बिलासपुर (हि0प्र0) के रिकार्ड में दर्ज करने के आदेश जारी कर दिये जायेंगे।

आज दिनांक 01–11–2022 को मेरे हस्ताक्षर व मोहर अदालत से जारी हुआ।

मोहर। हस्ताक्षरित / –
उप–मण्डल दण्डाधिकारी,
सदर, जिला बिलासपुर (हि0 प्र0)।

ब अदालत सहायक समाहर्ता द्वितीय श्रेणी एवं नायब तहसीलदार, भलेई, जिला चम्बा (हि0 प्र0)

श्री साधू राम पुत्र चिन्त राम, निवासी गांव सिमणी, परगना व उप–तहसील भलेई, जिला चम्बा (हि0 प्र0) .. प्रार्थी

बनाम

आम जनता .. फरीकदोयम।

प्रार्थना–पत्र बाबत नाम दरुस्ती जेर धारा 38(2) हि0 प्र0 भू–राजस्व अधिनियम, 1954 के अन्तर्गत करने बारे।

श्री साधू राम पुत्र चिन्त राम, निवासी गांव सिमणी, परगना व उप–तहसील भलेई, जिला चम्बा (हि0 प्र0) ने निवेदन किया है कि आवेदक का नाम ग्राम पंचायत सिमणी के परिवार रजिस्टर रिकार्ड में साधू राम सही व दुरुस्त दर्ज है लेकिन राजस्व अभिलेख मुहाल सिमणी में प्रार्थी का नाम साधू दर्ज है जोकि गलत दर्ज है। जिसे प्रार्थी उपरोक्त अभिलेख के अनुसार साधू की बजाये साधू राम पुत्र चिन्त राम दुरुस्त करवाना चाहता है।

अतः सर्वसाधारण को इस इश्तहार द्वारा सूचित किया जाता है कि यदि किसी व्यक्ति को प्रार्थी उक्त के नाम दुरुस्त करने बारा कोई उजर व एतराज हो तो वह दिनांक 01–12–2022 को प्रातः 10.00 बजे असालतन या वकालतन हाजिर होकर अपना उजर व एतराज लिखित रूप में पेश करें अन्यथा प्रार्थी का नाम दुरुस्त करने बारा आदेश पारित कर दिये जायेंगे। इसके उपरान्त कोई भी उजर व एतराज काबिले समायत न होगा।

आज दिनांक 01–11–2022 को मेरे हस्ताक्षर व मोहर अदालत द्वारा जारी किया गया।

मोहर। हस्ताक्षरित / –
सहायक समाहर्ता द्वितीय श्रेणी,
उप–तहसील भलेई, जिला चम्बा (हि0 प्र0)।

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In the Court of Sub-Divisional Magistrate, Chamba, District Chamba (H. P.)

Sh. Madhav Vassu s/o Sh. Narinder Mahajan, aged 31 years, r/o Mohalla Mugal, Chamba Town, Tehsil & District Chamba (H. P).

and

Diksha Awasthi d/o Sh. Narender Kumar, aged 30 years, r/o Village Baharu, P.O. Deogran, Tehsil Palampur, Distt. Kangra (H.P.)

Versus

The General Public

Subject.— Notice regarding registration of Marriage under sections 15 & 16 of Special of Marriage Act,1954.

Whereas, the above named applicants have made an application before the undersigned under section 15 of Special Marriage Act, 1954 (Central Act) as amended by the Marriage Laws (Amendment Act 01, 49 of 2001) alongwith affidavits and other relevant documents stating therein that they have solemnized their marriage on 05-02-2017 at their place of residences and they are living together as husband and wife since then. Hence their marriage may be registered under Special Marriage Act, 1954.

Now therefore, the general public is hereby informed through this notice that any person who has any objection regarding the registration of this marriage can file the objections personally or in writing before this court on or before 18-12-2022. After that no objections will be entertained and marriage will be registered accordingly.

Issued under my hand and seal of the Court on this 17th Day of November, 2022.

Sd/-

Seal. (ARUN KUMAR SHARMA, HPAS),
Sub-Divisional Magistrate,
Chamba, District Chamba (H.P.).

ब अदालत सहायक समाहर्ता प्रथम श्रेणी, तहसील लाहौल, जिला लाहौल एवं स्पीति (हि0प्र0)

प्रेम लाल पुत्र श्री धनी राम, गांव शूलिंग, डाकघर गौन्धला, तहसील लाहौल, जिला लाहौल एवं स्पीति।

बनाम

आम जनता

विषय.––प्रार्थना–पत्र बराए नाम दुरुस्ती करने बारे।

प्रेम लाल पुत्र श्री धनी राम, गांव शूलिंग, डाकघर गौन्धला, तहसील लाहौल, जिला लाहौल एवं स्पीति ने एक आवेदन शपथ पत्र सहित (बराए नाम दुरुस्ती) इस अदालत में प्रस्तुत किया है जिसमें प्रार्थी ने उल्लेख किया है कि उनके पिता का नाम आधार कार्ड, पेन कार्ड, वोटर कार्ड, शैक्षणिक प्रमाण–पत्र व परिवार रजिस्टर नकल में धनी राम हैं परन्तु भू–राजस्व अभिलेख पटवार वृत्त गोन्धला, मौहाल शूलिंग में धनू दर्ज है। मुताबिक प्रार्थी दोनों नाम एक ही व्यक्ति यानि मेरे पिता के ही हैं। अब प्रार्थी अपने पिता का नाम राजस्व अभिलेख पटवार वृत्त गौन्धला के महाल शूलिंग में दुरुस्त करके धनू के स्थान पर धनू उर्फ धनी राम दर्ज करवाना चाहता है।

अतः इस नोटिस द्वारा आम जनता एवं सम्बन्धित रिश्तेदारों को सूचित किया जाता है कि यदि किसी को प्रार्थी के नाम को राजस्व अभिलेख पटवार वृत्त गोन्धला के मौहाल शूलिंग में धनू उर्फ धनी राम दर्ज करने में कोई उजर व एतराज हो तो वह इस अदालत में दिनांक 07–12–2022 तक असालतन या वकालतन हाजिर आकर अपना एतराज पेश कर सकता है। अन्यथा मुताबिक प्रार्थना–पत्र, शपथ–पत्र व अन्य दस्तावेजों के आधार पर प्रार्थी के पिता का नाम राजस्व अभिलेख पटवार वृत्त गोन्धला, मौहाल शूलिंग, तहसील लाहौल में धनू के स्थान पर धनू उर्फ धनी राम दर्ज इन्द्राज करने के आदेश पारित कर दिए जायेंगे।

आज दिनांक 07–11–2022 को हमारे हस्ताक्षर व मोहर अदालत द्वारा जारी किया गया।

मोहर। हस्ताक्षरित / –
सहायक समाहर्ता प्रथम श्रेणी,
तहसील लाहौल, जिला लाहौल एवं स्पीति, हिमाचल प्रदेश।

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CHANGE OF NAME

I, Shivam Chauhan s/o Sh. Kushal Raj Chauhan, r/o Village Kolan, P.O. Thor, Tehsil Rajgarh, District Sirmaur (H.P.) declare that my parent's name written incorrect Kushal Raj and Anjana in my certificates of 10th class Roll No. 2311531 Sr. No. 1622871 and 12th Class Roll No. 17607757 Sr. No. 1165854 from CBSE Panchkula (HR). The correct name is Kushal Raj Chauhan and Anjana Kumari.

SHIVAM CHAUHAN
s/o Sh. Kushal Raj Chauhan,
r/o Village Kolan, P. O. Thor,
Tehsil Rajgarh, District Sirmaur (H.P.).

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CHANGE OF NAME

I, Vikrant Rana s/o Sh. Ranjeet Singh, Village Karner, P.O. Naura, Tehsil Dheera, District Kangra (H.P.) declare that in my matriculation and 10+2 certificates my father and mother name is mentioned as Ranjit Singh and Anita Devi, but my father correct name is Ranjeet Singh and mother's correct name is Anita Kumari.

VIKRANT RANA
s/o Sh. Ranjeet Singh,
Village Karner, P.O. Naura,
Tehsil Dheera, District Kangra (H.P.).

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CHANGE OF NAME

I, Nancy Rana d/o Sh. Surjeet Singh, Village Kiyara, P.O. Kiarwan, Tehsil Dheera, District Kangra (H.P.) declare that in my matriculation certificate my father and mother name is mentioned as Surjeet Singh Rana and Vandana Rana, but my father correct name Surjeet Singh and mother's correct name is Vandana Devi.

NANCY RANA
d/o Sh. Surjeet Singh,
Village Kiyara, P.O. Kiarwan,
Tehsil Dheera, District Kangra (H.P.).

नियन्त्रक, मुद्रण तथा लेखन सामग्री, हिमाचल प्रदेश, शिमला–5 द्वारा मुद्रित तथा प्रकाशित
इलेक्ट्रॉनिक हस्ताक्षरित राजपत्र, वैबसाइट http://rajpatrahimachal.nic.in पर उपलब्ध है एवम् ऑनलाइन सत्यापित किया जा सकता है।